

**PERFORMANCE-BASED ACQUISITIONS:  
CREATING SOLUTIONS OR CAUSING PROBLEMS?**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON HOMELAND SECURITY**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

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## **PERFORMANCE-BASED ACQUISITIONS: CREATING SOLUTIONS OR CAUSING PROBLEMS?**

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**Thursday, May 8, 2008**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The committee met, pursuant to call, at 10:05 a.m., in Room 311, Cannon House Office Building, Hon. Bennie G. Thompson [chairman of the committee] presiding.

Present: Representatives Thompson, Dicks, Jackson Lee, Etheridge, Cuellar, and Pascrell.

Chairman THOMPSON [presiding]. The Committee on Homeland Security will come to order.

For the sake of the witnesses, just as we were about to come, we got a notice that they will have five votes very shortly. I am certain our attendance is reflective of people wanting to move into the Capitol and do the votes before they come. It is my hope that we can do at least the opening statements, and then come back for the question-and-answer period, which should be pretty good. I want to thank Mr. Etheridge for coming to the committee so we can begin.

The committee is meeting today to receive testimony on Performance-Based Acquisitions: Creating Solutions or Causing Problems. Performance-based contracting allows the government to issue contracts without specifying what goods or services it wants to buy. Instead, the government can issue a statement describing the problem it wants solved and have the private sector propose solutions. This approach can provide the needed flexibility to promote innovations by businesses, or it can be a recipe for chaos.

Let me just give you a few highlights of the department's experience with performance-based contracting. Emerge2 was a performance-based contract to develop a department-wide financial management system. It did not have clear or complete requirements. After spending \$52 million, the department scrapped the program.

Deepwater is a performance-based contract program to modernize the Coast Guard fleet. In August, 2006, the department's inspector general recommended that the Coast Guard increase oversight of the program and better define requirements. This would help ensure that the contractor's activities met program goals. The department couldn't follow the IG's recommendations. By August, 2007, it had spent \$1 billion on a program that has become well known for producing ships that would not float.

Project 28 of SBINet was a performance-based contract to enhance border security. Not only has the program been repeatedly delayed, but it has not yet met the department's needs. DHS accepted this project and paid the contractor, but said that most of the work must be redone. American taxpayers have already spent \$20 million on this project and now DHS is saying that they will need at least \$40 million to fix it.

I will provide additional examples of performance-based contracting gone wrong, but I will spare you the sad litany. But I will say this: There are strict rules that govern the issuance of performance-based contracts. Moreover, GAO has found that strong organizational systems must be in place to effectively implement this kind of contract.

At a minimum, there must be an adequate number of trained and knowledgeable procurement staff. There must also be active involvement between program managers and procurement staff. Finally, there must be oversight to assure that contractors are meeting expectations. Without these basic organizational features, performance-based contracting will not succeed. DHS does not have these basic features.

Structurally, the chief procurement officer is hamstrung. He does not have direct line authority over procurement operations within the components. At the same time, the procurement operations are not fully staffed. GAO reports that as of February, 2008, DHS only had 60 percent of the necessary procurement personnel on board.

I appreciate that the new chief procurement officer is trying to make changes, and that he is under the gun to comply with the Office of Management and Budget's mandated 40 percent use of performance-based contracting. Given these circumstances, it should come as no surprise that costly mistakes happen, staff attrition grows, inadequate planning continues, and the cycle of ineptitude and waste goes on. But when we are spending the taxpayer's money, complacency about the weaknesses in DHS' procurement shop is not acceptable.

Let me be clear: I am not suggesting that we throw the baby out with the bathwater. However, I am suggesting that we adjust the water temperature, switch our brand of soap, and replace the sponge. We cannot keep doing the same thing in the same way and expect different results.

The American people deserve our best efforts and our assurance that their money is being spent wisely. When it comes to performance-based contracts, they have received neither.

[The statement of Chairman Thompson follows:]

PREPARED STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

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The American people deserve our best efforts and our assurance that their money is being spent wisely. When it comes to performance-based contracts, they have received neither.

Chairman THOMPSON. In the absence of a minority member on the committee present, we will go directly to our panel of witnesses. I welcome the panel of witnesses. Our first witness is Mr. Thomas Essig, the chief procurement officer of the Department of Homeland Security. He is the lead executive responsible for management, administration and oversight of the department's acquisition operations.

Our second witness is Mr. John Hutton, director of acquisition and sourcing management at the Government Accountability Office. Mr. Hutton has been with GAO for over 30 years.

Our third witness is Ms. Anne Reed. Ms. Reed is chief executive officer of Acquisition Solutions, a research and consulting company that specializes in advising Federal agencies on acquisition issues.

Our fourth witness is Mr. Alan Chvotkin. Mr. Chvotkin is the senior vice president and counsel for Professional Services Council,

which is a trade association of over 300 small-, medium-, and large-size companies that do business with the Federal Government.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Essig of DHS.

**STATEMENT OF THOMAS W. ESSIG, CHIEF PROCUREMENT  
OFFICER, DEPARTMENT OF HOMELAND SECURITY**

Mr. ESSIG. Chairman Thompson, Ranking Member King, and members of the committee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's use of performance-based acquisition. I am the department's chief procurement officer, CPO, and I am responsible for the management, administration, and oversight of the department's acquisition program.

I am a career Federal employee with more than 30 years of public service in the acquisition career field. I previously held several senior acquisition positions with the Navy Department before joining DHS in May of 2006. I am certified at level III, the highest level, in both the contracting and program management career fields at both DHS and the Department of Defense.

Performance-based acquisition, or PBA, is a method of acquisition that provides the potential for the Federal Government to tap into private industry innovation and its commercial best practices in order to achieve better mission results. The focus of PBA is on the desired outcome, rather than the process.

In last year's report to the Office of Federal Procurement Policy and Congress, however, the Acquisition Advisory Panel noted that there was some debate as to the value of this technique. Some noted challenges in implementation, especially for those who define "requirements" within the program management community. Other recommended that several categories of requirements be excluded from consideration for PBA, including staff augmentation requirements and requirements that necessitate absolute performance standards based on health and safety considerations.

In my experience, a key factor required for successful PBA is a thorough understanding of the requirement by all parties. The term "requirement," however, can mean different things to different people. From the perspective of the user, which includes our first responders and law enforcement personnel, the requirement is a user-defined need. From the contracting perspective, however, the requirement is what the contract identifies, no more and no less.

That can be a source of problems downstream when the product or service that is delivered meets the contract's requirements, but not the users. A key aspect of successful PBA, therefore, is the ability to translate user needs into measurable outcome-based requirements. That is not just a contracting function and requires a team effort from a wide range of functional specialists.

The level of acquisition sophistication possessed by program procurement and other personnel involved in the process also plays a key role in the ability of an agency to successfully initiate and



manage a portfolio of PBAs. Successful PBAs require considerable effort by a highly skilled requirements and acquisition workforce.

DHS is a relatively new department created after the events of September 11. Given the nature of our mission and continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBA in a judicious manner. Our goal is to increase both the quantity and quality of our PBAs, while continuing to meet essential mission requirements.

This week, GAO released its report on PBAs. In that report, they recommended that DHS implement three actions. As detailed more fully in my written statement, we concur with those recommendations. DHS is committed to increasing its use of quality PBAs whenever practicable and appropriate, and my office will continue to lead the DHS acquisition community in this effort.

Personnel from my office have been actively engaged in OFPP's PBA interagency working group and we recently sponsored an Excellence in Contracting series training event for DHS on PBA that was conducted jointly by OFPP and GSA. In addition to providing PBA policy and training support, my office is charged with performing oversight of all DHS contracting activities.

During scheduled procurement management reviews by my contract oversight team, PBA is addressed to ascertain whether such contracts include the fundamental PBA elements such as performance-based statements of work, corresponding performance metrics, and a quality assurance surveillance plan.

We have also implemented a number of initiatives to improve and validate the accuracy of the data in our Federal procurement data system and we are an active member of the OFPP government-wide group working to improve that system.

To summarize, PBAs are a sound acquisition management tool for a wide range of requirements. As noted by the Acquisition Advisory Panel, the mandate is clear: improve the effectiveness and appropriate use of PBA. A key aspect of effective PBA is the ability to translate user needs into measurable outcome-based requirements. Effective PBAs also require considerable up-front efforts and are not right for every procurement.

Given the nature of the DHS mission, the organizational maturity of our new department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBAs in a judicious manner. It is my job to ensure we do that.

Thank you, Mr. Chairman, for your interest in and continued support of the DHS acquisition program and the opportunity to testify before the committee about the department's use of PBA. I would be glad to answer any questions you or other members of the committee may have for me.

[The statement of Mr. Essig follows:]

STATEMENT OF THOMAS W. ESSIG

MAY 8, 2008

Chairman Thompson and Members of the committee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) acquisition program in conjunction with the hearing entitled "Performance-

Based Acquisitions: Creating Solutions or Causing Problems?”. I am the Chief Procurement Officer (CPO) for the Department.

As the CPO, I am the lead executive responsible for the management, administration and oversight of the Department’s acquisition programs. In that capacity, I oversee and support eight procurement offices within DHS—U.S. Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), United States Coast Guard (USCG), United States Secret Service (USSS), Federal Law Enforcement Training Center (FLETC), and the Office of Procurement Operations (OPO). My office provides the acquisition policies, procedures, training and workforce initiatives that enable our acquisition professionals to support mission accomplishment while also being good stewards of taxpayer dollars.

Before addressing the subject of today’s hearing, “Performance-Based Acquisitions: Creating Solutions or Causing Problems?”, I would like to take this opportunity to summarize my background and convey my top priorities as the CPO. I am a career Federal employee, with more than 30 years of public service in the acquisition career field. I began my Federal career in 1976 when I entered the Navy’s Contracting Intern Development Program. My initial assignment was with the Naval Sea Systems Command (NAVSEA), where I served as a contract specialist supporting various Naval weapon systems and shipbuilding programs. I was selected as a member of the Senior Executive Service in 1995 and served as the Director of the Surface Systems Contracts Division of NAVSEA. I have also held Senior Executive Service positions with the Navy Department as the Executive Director of the Office of Special Projects, Director of the Navy Engineering Logistics Office, and Director for Program Analysis and Business Transformation in the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition. I joined DHS in May 2006 as the Deputy Chief Procurement Officer and was selected as the Chief Procurement Officer in late December 2007. While most of my career has been in the area of contracting, my assignments have also given me responsibility for leadership of other critical acquisition functions. As a result, I am certified at Level III (the highest level) in both the contracting and program management career fields at both the Department of Defense (DoD) and DHS.

As you are aware, DHS is a relatively new Department, created after the events of September 11. Due to the scope of our mission and the challenges inherent in the creation of a new Department, we initially found ourselves short staffed and focused almost exclusively on one goal—mission accomplishment. At times, however, that was at the expense of the quality of the business deal. Since then, we have implemented a number of initiatives to improve our level of performance and ensure that our business deals enable us to both accomplish our mission and provide for good stewardship of taxpayer dollars.

Earlier this year, I identified my top priorities for fiscal year 2008. As those priorities are particularly relevant to today’s topic, I would like to summarize them here.

#### PRIORITY 1: QUALITY CONTRACTING

This goal was initially put in place by my predecessor, Ms. Elaine Duke. While we have made significant improvements in this area, more remains to be done to ensure quality contracting over the entire life cycle of the contract, from preparing the statement of work to closeout of the contract. In support of this priority, my office intends to continue to develop a policy framework to facilitate the Department’s ability to meet its acquisition-related mission requirements, even in the face of urgent requirements. Our initiatives include, but are not limited to the following:

##### *Goal: To Make Good Business Deals*

- Improve the level and quality of our competitions by establishing competition goals for each of the Components and recognizing significant achievements through a competition award program;
- Achieve DHS small business goals;
- Stay current on acquisition policy matters by being an active member of the Civilian Agency Acquisition Council (CAAC), by leading the DHS Chief Acquisition Officer (CAO) Council, and by issuing DHS-wide policy guidance and training based on identified competency gaps;
- Advise Components on implementation of recommendations from DHS Oversight reviews;
- Ensure that acquisition personnel provide timely and accurate data entries into the Federal Procurement Data System—Next Generation (FPDS-NG) and the Past Performance Information Retrieval System (PPIRS) acquisition systems;
- Encourage Component Heads of Contracting Activities (HCAs) to leverage cost and pricing expertise from within the Office of the Chief Procurement Officer

(OCPO) and other agencies, such as the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), or Navy Price Fighters Pricing, to ensure business deals are well supported and documented to reflect fair and reasonable prices; and

- Establish a DHS-wide Acquisition Knowledge Management toolkit.

*Goal: To perform effective contract administration.*—In addition to ensuring our contract awards represent good business deals, we must perform effective administration of those contracts in order to ensure we get what we bargained for. In order to perform effective contract administration, my office intends to implement initiatives that include the following:

- Ensure proper contract administration is performed on all DHS contracts, to include obtaining support from organizations such as DCMA, especially with regard to Earned Value Management;
- Provide just-in-time contract administration training through the development of several online job-aids, to include training and policy guidance on proper role of Contracting Officer Technical Representatives (COTRs); and
- Develop a Government Furnished Equipment (GFE) “Roadshow” to acquaint professionals with significant changes to policy on administration of GFE.

#### PRIORITY 2: QUALITY ACQUISITION MANAGEMENT

We also recognize that you don’t achieve program success through good contracting alone.

*Goal: To improve the quality of program management throughout DHS.*—In order to deliver capabilities to meet the Department’s mission on schedule and within budget, my office is in the process of strengthening program management, including the related functions such as cost analysis, logistics, systems engineering, and test and evaluation, by implementing initiatives that include the following:

- Complete “Quick-Look” reviews of Department Level 1 acquisition programs as a rapid assessment tool to identify high risk area, as well as a more in-depth “Deep Dives” review when needed;
- Leverage insight gained from these reviews to refine Departmental acquisition policies and processes, and provide governance support to Component Program Managers;
- Implement program success metrics to provide an “automated” look into the health of our key programs;
- Re-engineer the DHS Investment and Acquisition Review Processes;
- Address concerns regarding the certification of acquisition personnel through various DHS training programs;
- Empower Program Managers and hold them accountable; and
- Facilitate improvement of practices and execution of programs through the DHS Program Management and Test and Evaluation Councils.

#### PRIORITY 3: QUALITY PEOPLE

Neither of the first two goals can be achieved without a highly skilled and motivated acquisition workforce.

*Goal: To build and sustain the DHS Acquisition Workforce.*—In order to build a world class acquisition workforce, I am implementing initiatives that include the following:

- Provide centralized hiring for acquisition and procurement personnel through DHS-wide vacancy announcements and exercise the recently granted re-employed annuitant authority and pursue direct hire authority for the contracting career field in order to resolve personnel shortages;
- Standup of the Acquisition Professionals Career Program as an entry level vehicle to satisfy the long term need for qualified acquisition personnel with 66 participants in fiscal year 2008 and 100 participants in fiscal year 2009;
- Fund an Acquisition Workforce Training program to deliver unified training of personnel by developing their knowledge, skills and abilities to make good business deals; and
- Establish new Acquisition Workforce Certification requirements for acquisition personnel by revising these certification requirements to align with OMB and DoD policy.

#### PERFORMANCE-BASED ACQUISITIONS (PBAS)

Federal agency usage of outcome-based service contracts, or PBAs, has been a topic of interest within the procurement community for more than 20 years. It is seen by many as a method of acquisition that provides for the potential for the Federal Government to tap into private industry innovation and its commercial best

practices to achieve better mission outcomes than are achieved through traditional Government acquisition approaches. The focus of PBA is on the outcome rather than the process; the Federal Government is buying performance and results and is not focused on the processes or activities that our contractors utilize to achieve these desired outcomes.

In last year's report to the Office of Federal Procurement Policy (OFPP) and Congress, the Acquisition Advisory Panel noted that during its public deliberations, there was some debate as to the value of this technique. Witness testimony, as well as written public statements, was mixed on PBA merits. Some questioned the validity of PBA for Federal Government uses after more than a decade of attempts to implement the methodology have failed to produce expected results. Others, however, noted significant successes using PBA. And though an OFPP study found generally positive results, the Panel found no systematic governmentwide effort to assess fully the merits of the process. Many witnesses spoke to the challenges in implementing the technique, most of which focused on the acquisition workforce, especially those who define requirements within the program management community. Commercial organizations told the Panel that implementing the technique can be difficult, particularly in identifying the appropriate performance standards to measure. A number of witnesses suggested that several categories of requirements be excluded from the pool of acquisitions that should be considered for PBA, including staff augmentation requirements, such as program office support, and requirements that necessitate absolute performance standards based on health and safety considerations, such as management of a nuclear facility where there is no room or desire for flexibility or innovative solutions. Further, the Panel noted that FPDS-NG reporting errors and the lack of meaningful data with respect to both PBA usage and successful outcomes continue to plague the Federal acquisition community.

Nevertheless, PBA has become widely accepted as a sound contract management method within the Federal Government for a wide range of requirements. Despite the difficulties noted in the Advisory Panel's report, PBA remains the preferred commercial technique seen as critical to obtaining transformational and innovative solutions. Ultimately, the Acquisition Advisory Panel determined that its statutory mandate was clear: improve the effectiveness and appropriate use of PBA.

It is OFPP who provides active leadership with respect to the implementation and reporting of PBAs throughout the Federal Government. In response to OFPP's requirement, DHS submitted its initial Performance-Based Acquisition Management Plan to OFPP on October 1, 2006. This Management Plan includes mission details by our respective Component contracting offices; management support strategies to ensure that PBAs are used within DHS to the maximum extent practicable; policy and guidance issued to encourage the use of PBAs; a summary of the acquisition process for PBAs including key roles and responsibilities; service categories where PBAs are primarily used; reporting requirements; and training initiatives.

In my experience, a key factor required for successful PBAs is a thorough understanding of the requirement by all parties. The term "requirement," however, is used throughout the acquisition process and can mean different things to different people. From the perspective of the user—which includes our first responders and law enforcement personnel—the requirement is a user defined need. From the perspective of the contracting officer and contractor, however, the requirement is what the contract identifies—no more and no less. That can be the source of problems downstream when the product or service that is delivered meets the contract's requirement, but not the user's. A key aspect in successful performance-based acquisitions, therefore, is the ability to translate the user need into measurable, outcome-based requirements that all parties—including the user—understand and agree to. That is not just a contracting function and consequently requires a team effort from a wide range of functional specialists. It is also a labor intensive process that must be completed prior to award of the contract.

Furthermore, PBAs are not right for every requirement. In complex service acquisitions, where user requirements may change during the course of the contract, the approach could be disadvantageous. In such a situation, the contract would "require" services that are not what the user actually needs.

While the benefits of PBA are many, the sophistication of both program, procurement and other offices involved in the process plays a key role in the ability of any agency to successfully initiate and manage a portfolio of PBAs. PBA usage requires considerable effort on the front-end of the process by a highly skilled requirements and acquisition workforce. Likewise, during contract administration, PBA requires a labor intensive effort of contractor surveillance that places further demands on the respective program management offices.

In my discussion of my top priorities for 2008, I mentioned the need for us to ensure that our business deals enable us to both accomplish our mission and provide

for good stewardship of taxpayer dollars. PBAs can be an effective tool for accomplishing that. However, given the nature of our mission, the organizational maturity of our new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBAs in a judicious manner. Our goal is to increase both the quantity and quality of our PBAs, while continuing to meet our essential mission requirements.

GAO REPORT ON DHS' USE OF PERFORMANCE-BASED ACQUISITIONS

This week, the GAO released its report, "*DEPARTMENT OF HOMELAND SECURITY, Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions*". GAO was asked to (1) evaluate the implementation of a performance-based approach in the context of service acquisitions for major, complex investments, and (2) identify management challenges that may affect DHS' successful acquisitions for major investments, including those using a performance-based approach. In its report, the GAO made the following recommendations:

"To increase DHS's ability to achieve improved outcomes for its service acquisitions, including those that are performance-based, we recommend that the Secretary of Homeland Security implement the following three actions:

"(1) routinely assess requirements for major, complex investments to ensure that they are well-defined and develop consistently measurable standards linked to those requirements;

"(2) at a department-wide level, systematically evaluate the outcomes of major investments and relevant contracting methods; and

"(3) continuously improve the quality of FPDS-NG data to facilitate the ability to accurately identify and assess the use and outcomes of various contracting methods."

We concur with those recommendations and offer the following with respect to the report's three recommendations:

In response to the first two recommendations, DHS is committed to increasing its use of quality PBAs whenever practicable and appropriate, and my office will continue to lead the DHS acquisition community in this effort. PBA training sessions have been provided to the entire acquisition community, including a recent OFPP/GSA sponsored event. Further, we have centralized our training program, making the Department better positioned to maximize the use of available training resources and to deliver needed training to a greater percentage of the acquisition workforce.

I am working to strengthen acquisition and procurement by institutionalizing solid processes that will support our ability to maximize our use of PBA, including the following actions:

A. Strengthening the requirements and investment review processes. We are currently developing a new Department-wide requirements process and re-engineering our investment and acquisition review process;

B. Reviewing the major programs and investments to ensure that the requirements are clear, cost estimates are valid, technology risks are properly assessed, schedules are realistic, contract vehicles are proper, and the efforts are well managed. We have held one formal Deputy Secretary IRB and projecting one per month. DHS is also beginning the process of conducting paper IRBs and Deputy Under Secretary for Management IRBs, as well as establishing Acquisition Program Baselines (APBs) and authorizing execution to the APB for all Level 1 and 2 programs;

C. Building the capability to manage complex efforts by ensuring that program offices are properly structured and staffed with the right people and skills to ensure efficient and effective program management and oversight; and to aggressively hire where we have known shortages; and

D. Examining best practice metrics in use by other departments with the intent to start implementation this year.

The Acquisition Program Management Division (APMD) within OCPO began operations in August 2007. The division was established to provide policy, oversight and support for the Department's acquisition programs. To date, APMD has performed *Quick Look* assessments of thirty-seven Level 1 programs and has overseen *Deep Dive* reviews of the SBInet and Advance Spectroscopic Portal (ASP) programs. APMD has provided advice and guidance to a number of programs, particularly in the area of cost benefit analysis. Currently the APMD team is focused on an aggressive Investment and Acquisition process re-engineering effort. The effort includes replacing DHS Management Directive 1400 *Investment Review Process*, establishing revised investment and acquisition decision procedures, as well as processes for ac-

quisition program baselining, periodic reporting, acquisition of services, and other initiatives as they are identified.

We are also working to ensure that DHS obtains qualified acquisition professionals. Competition for these professionals is intense within the Washington, DC area. To resolve these personnel shortages, we are intensifying our human capital planning efforts to minimize skill and competency gaps as well as minimize our critical vacancies and reliance on contractors. We are also conducting staffing studies to better define our acquisition workforce needs. Our acquisition workforce currently includes both program managers and contract specialists. As part of our human capital planning efforts, we will be identifying other required acquisition career fields such as test and evaluation, systems engineering, logistics, and cost estimating. We are aggressively working to ensure that each acquisition position, upon definition, is encumbered by an acquisition professional trained and certified at the appropriate level. To this end, we are continuously reviewing and updating our Acquisition Training Program, the underpinning of a good certification program. We are utilizing the Defense Acquisition Workforce Improvement Act framework to develop DHS certification standards. We have also centralized a number of recruiting activities including issuing Department-wide vacancy announcements. Our centralized recruitment efforts to date have focused primarily on contracting professionals. Expansion to other acquisition career fields will occur as each series is defined and Department-wide needs are identified. This initiative supplements our Components' on-going recruitment efforts with a goal of recruiting the best candidates available. This year, the Department received funding for the standup of the Acquisition Professional Career Program, which will be our primary source of entry level acquisition personnel, providing both on the job and formal classroom training. Our goal is to grow this program to 300 positions by fiscal year 2011 to fill our critical acquisition needs.

Personnel from OCPO have been actively engaged in OFPP's Performance-Based Acquisition Interagency Working Group. The Group has worked to enhance OFPP's PBA Seven Steps Guidance and make available appropriate samples. And, OCPO recently sponsored a widely attended and well received "Excellence in Contracting" series training event on PBA that was conducted jointly by OFPP and the General Services Administration.

Acquisitions for services within DHS currently represent a significant portion of the agency's procurement dollars, and we recognize the need to ensure that our complex service acquisitions meet the program needs that serve to support the overall DHS mission. In addition to providing PBA policy and training support, my office is charged with performing oversight of all DHS contracting activities to include monitoring the usage and reporting of PBAs.

Further, as part of regularly conducted OCPO procurement management reviews of DHS Components, PBA is addressed to ascertain whether such contracts include the fundamental PBA elements such as performance-based statements of work and corresponding performance metrics, and to ensure that a quality assurance surveillance plan is in place and used to validate contractor compliance with contract-mandated outcomes. Additionally, on a quarterly basis, Component PBA data is reviewed to compare PBA goals to outcomes, and feedback capability is being added to this process in the fourth quarter of this fiscal year.

In response to GAO's third recommendation, as part of OCPO's oversight reviews, the accuracy of the FPDS-NG data is validated for the review sample, including whether the contract has been properly coded as performance-based. Additionally, OCPO is an active member of the Office of Federal Procurement Policy government-wide group that is working to improve FPDS-NG, including the re-competition of the service provider. OCPO has also established a Governance Board whereby OCPO reaches out to the DHS Components to improve upon the Department's data collection.

#### SUMMARY

PBA is a sound acquisition management method for a wide range of requirements and can be critical to the attainment of innovative commercial solutions. A key aspect of successful implementation of PBA, however, is the ability to translate user needs into measurable, outcome-based requirements. The effort is not just a contracting function and requires a team effort from a wide range of acquisition specialists. PBAs also require considerable effort up front and are not right for every requirement. Given the nature of DHS' mission, the organizational maturity of our new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBAs in a judicious manner.

Thank you, Mr. Chairman for your interest in and continued support of the DHS Acquisition Program and for the opportunity to testify before the committee about the Department's use of Performance-Based Acquisitions. I would be glad to answer any questions you or other Members of the committee may have for me.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Mr. Hutton of GAO to summarize his statement for 5 minutes.

**STATEMENT OF JOHN HUTTON, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. HUTTON. Mr. Chairman, members of the committee, thank you for inviting me here today to discuss the Department of Homeland Security's planning and assessment of complex service acquisitions. DHS spends billions of dollars a year acquiring a variety of services to help address its homeland security mission.

To help improve service acquisition outcomes, Federal procurement policy calls for agencies to use a performance-based approach to the maximum extent practicable. A performance-based approach represented a shift from specifying the way in which contractors should perform work, to specifying acquisition outcomes.

Key characteristics of this approach include a performance work statement that describes outcome-oriented requirements, measurable performance standards, and quality assurance surveillance. If properly implemented, these characteristics can help ensure that contract services meet cost, schedule and performance requirements.

My testimony based on a report we are releasing today will focus on how contract outcomes were influenced by how well DHS components defined and developed the contract requirements and measurable performance standards, and the need for improved assessment and oversight to ensure better outcomes.

First, our work emphasized the importance of clearly defined requirements to achieving desired outcomes and measurable performance standards to ensure control and accountability. This finding is consistent with our broader body of work on service acquisitions.

For the eight major investments at three DHS components we reviewed, we found that they all had outcome-oriented requirements. However, contracts for four of these investments did not have what we would say are well-defined requirements or a complete set of measurable performance standards, or both, at the time of the contract award or start of work.

These contracts experienced costs overruns, schedule delays, or did not otherwise meet performance expectations. For example, systems development contracts for two major investments lacked both well-defined requirements and measurable performance standards prior to the start of work, and both experienced less than desirable outcomes.

Two examples, for the automated commercial environment task order 23, a trade software modernization effort, requirements were not fully defined at contract award, thus affecting the establishment of measurable performance standards and valid cost or schedule baselines for assessing contractor performance. The need to re-

define requirements contributed to schedule delays and cost increases.

Another is the Secure Border Initiative, Project 28, which lacked some well-defined requirements and measurable performance standards. For example, the task order was awarded before operational requirements and systems justifications were finalized.

Conversely, we found that contracts with well-defined requirements linked the measurable performance standards, delivered results within budget, and provided a quality service. For example, contracted security services under TSA's screening partnership program at one airport had well-defined requirements and measurable performance standards linked to the contract requirements. This was an improvement from our prior reviews of the program, and in terms of expected outcomes, the contractor achieved a cost under-run during the first 5 months of the contract and exceeded most requirements.

I would now like to highlight our findings related to the need for improved assessment and oversight to ensure better outcomes in acquiring services. Reliable data are essential to overseeing and assessing the implementation of contracting approaches, acquisition outcomes, and making informed management decisions.

However, DHS does not have reliable data from the government-wide procurement database or at the department-wide level to systematically monitor, evaluate or report on service acquisitions, including those that are performance-based. For example, our review of 138 selected contracts DHS identified as performance-based showed that about one-half had none of the required performance-based elements. About 30 percent of them had all three elements.

We and others have noted that inaccurate Federal procurement data is a longstanding government-wide concern. It is not just a DHS issue. Further, DHS representatives responsible for procurement oversight indicated they have not conducted systematic assessments, including costs, benefits, and other outcomes of a performance-based approach.

To its credit, DHS established a work group to leverage some knowledge among their DHS components to improve the implementation of performance-based acquisitions, and DHS representatives are also working with OFPP to develop a best practices guide on measurable performance standards and to gather some good examples of performance-based contracts.

The report we are releasing today recommends that DHS take several actions to increase its ability to achieve improved outcomes for its service acquisitions, including those that are performance-based. These actions include, one, routinely assessing requirements for complex investments to ensure they are well defined and developing measurable standards linked to those requirements, and systematically evaluating outcomes of major investments and improving the quality of data to help identify and assess use of various contracting methods.

Mr. Chairman, other members of the committee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have.

[The statement of Mr. Hutton follows:]



## PREPARED STATEMENT OF JOHN HUTTON

MAY 8, 2008

DEPARTMENT OF HOMELAND SECURITY: BETTER PLANNING AND OVERSIGHT NEEDED TO  
IMPROVE COMPLEX SERVICE ACQUISITION OUTCOMESGAO HIGHLIGHTS: HIGHLIGHTS OF GAO-08-765T, A TESTIMONY BEFORE THE COMMITTEE  
ON HOMELAND SECURITY, HOUSE OF REPRESENTATIVES*Why GAO Did This Study*

The Department of Homeland Security (DHS) has relied on service acquisitions to meet its expansive mission. In fiscal year 2006, DHS spent \$12.7 billion to procure services. To improve service acquisition outcomes, Federal procurement policy establishes a preference for a performance-based approach, which focuses on developing measurable outcomes rather than prescribing how contractors should perform services.

This testimony focuses on how contract outcomes are influenced by how well DHS components have defined and developed contract requirements and performance standards, as well as the need for improved assessment and oversight to ensure better acquisition outcomes.

GAO's statement is based on its report being released today, which reviewed judgmentally selected contracts for eight major investments at three DHS components—the Coast Guard, Customs and Border Protection (CBP), and the Transportation Security Administration (TSA)—totaling \$1.53 billion in fiscal years 2005 and 2006; prior GAO and DHS Inspector General reviews; management documents and plans; and related data, including 138 additional contracts, primarily for basic services from the Coast Guard, CBP, TSA, and Immigration and Customs Enforcement.

DEPARTMENT OF HOMELAND SECURITY: BETTER PLANNING AND OVERSIGHT NEEDED TO  
IMPROVE COMPLEX SERVICE ACQUISITION OUTCOMES*What GAO Found*

Over the past several years, GAO has found that appropriate planning, structuring, and monitoring of agency service acquisitions, including those that are performance-based, can help minimize the risk of cost overruns, delayed delivery, and unacceptably quality. Several prior GAO and DHS Inspector General reviews of major DHS investments using a performance-based approach point to such shortcomings. While all of the contracts GAO reviewed at the Coast Guard, CBP, and TSA had outcome-oriented requirements, contracts for four of the eight investments did not have well-defined requirements, or a complete set of measurable performance standards, or both at the time of contract award or start of work. These service contracts experienced cost overruns, schedule delays, or did not otherwise meet performance expectations. In contrast, contracts for the other four investments had well-defined requirements linked to measurable performance standards and met the standards for contracts that had begun work.

In managing its service acquisitions, including those that are performance-based, DHS has faced oversight challenges that have limited its visibility over service acquisitions and its ability to make informed acquisition management decisions. Notably, the department lacks reliable data on performance-based service acquisitions. About half of the 138 contracts identified by DHS as performance-based had none of the elements DHS requires for such contracts: a performance work statement, measurable performance standards, or a quality assurance surveillance plan. Such inaccurate data limit DHS's ability to perform management assessments of these acquisitions. In addition, the Chief Procurement Officer, who is responsible for departmentwide procurement oversight, has not conducted management assessments of performance-based service acquisitions.

To help DHS improve outcomes for its service acquisitions, including those that are performance-based, GAO recommended that DHS routinely assess requirements for complex investments to ensure that they are well-defined, and develop consistently measurable performance standards linked to those requirements. GAO also recommended that DHS systematically evaluate the outcomes of major investments and relevant contracting methods and improve the quality of data to facilitate identifying and assessing the use of various contracting methods. DHS generally concurred with GAO's recommendations, noting some departmental initiatives to improve acquisition management.

Mr. Chairman and Members of the committee, thank you for inviting me here today to discuss the Department of Homeland Security's (DHS) planning and assessment of its complex service acquisitions. To meet its expansive homeland security

mission, DHS spends billions of dollars on service acquisitions for critical trade, transportation, and border security investments. In fact, more than 80 percent of DHS's total procurement dollars are spent on services. Prior GAO work has found that appropriate planning, structuring, and monitoring of acquisitions is critical to ensuring that the services provided meet the government's needs.<sup>1</sup> To help improve service acquisition outcomes, Federal procurement policy calls for agencies to use a performance-based approach to the maximum extent practicable. This approach includes a performance work statement that describes outcome-oriented requirements, measurable performance standards, and quality assurance surveillance. If properly implemented, these characteristics can help ensure that contracted services meet cost, schedule, and performance requirements. Other factors, such as pressure to get programs up and running, additional external requirements, and technological challenges also impact the ability to achieve good acquisition outcomes.

While a performance-based approach has been widely accepted, we have found that agencies face certain challenges in implementing the approach—especially for complex or major investments. My testimony today will focus on the particular challenges DHS has confronted. Specifically, I will discuss how contract outcomes are influenced by how well DHS components have defined and developed contract requirements and performance standards. I will also discuss the need for improved assessment and oversight to ensure better outcomes.

My statement is based on our report that is being released today.<sup>2</sup> This report focused on contracts for major investments with complex service acquisitions at the Coast Guard, Customs and Border Protection (CBP), and the Transportation Security Administration (TSA)—three of the DHS components reporting among the highest obligations for performance-based service acquisitions in fiscal years 2005 and 2006. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### SUMMARY

Over the past several years, we have found that if agency service acquisitions, including those that are performance-based, are not appropriately planned, structured, and monitored, there is an increased risk that the government may receive products or services that are over budget, delivered late, and of unacceptable quality. Several prior GAO and DHS Inspector General reviews of major DHS investments using a performance-based approach point to such shortcomings. For the report we are releasing today, we reviewed contracts for eight major investments at the Coast Guard, CBP, and TSA and found that all had outcome-oriented requirements—as required in acquisition regulations and policy. However, contracts for four of these investments did not have well-defined requirements, or a complete set of measurable performance standards, or both at the time of contract award or start of work. These service contracts experienced cost overruns, schedule delays, or did not otherwise meet performance expectations. In contrast, service contracts for the other four investments had well-defined requirements linked to measurable performance standards and performed within budget meeting the standards in all cases where contractors had begun work. DHS components conducted quality assurance surveillance, and for the contracts that had negative outcomes, surveillance helped to identify contractor performance weaknesses and corrective action was taken.

In managing its service acquisitions, including those that are performance-based, DHS has faced oversight challenges, including a lack of reliable data and systematic management reviews. Although contracting and program staff at DHS components told us that they used a performance-based approach to the maximum extent practicable, the department does not have reliable data to facilitate required reporting or perform management assessments of these acquisitions. Our review of an additional 138 contracts, which were primarily for basic services, found that about half of the contracts coded by DHS as performance-based had none of the three elements DHS requires: a performance work statement, measurable performance standards, or a quality assurance surveillance plan. Inaccurate data limit DHS's visibility over service acquisitions and the department's ability to make informed acquisition man-

<sup>1</sup>For example, GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, D.C.: Nov. 9, 2006).

<sup>2</sup>GAO, *Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions*, GAO-08-263 (Washington, D.C.: Apr. 22, 2008).

agement decisions. The Chief Procurement Officer (CPO), who has responsibility for departmentwide procurement oversight, has begun some initial review of performance-based service acquisitions, but has not conducted management assessments of this acquisition method.

#### BACKGROUND

Over the last decade, the use of Federal service contracting has increased and now accounts for over 60 percent of Federal procurement dollars spent annually. A performance-based approach to Federal service contracting was introduced during the 1990's, representing a shift from specifying the way in which contractors should perform work to specifying acquisition outcomes. Regardless of the contracting method, focusing on outcomes and collaboration among multiple stakeholders in the contracting process has been acknowledged as sound contract management. In 2000, Federal procurement law established a performance-based approach as the preferred acquisition method for services.<sup>3</sup> The Federal Acquisition Regulation requires all performance-based service acquisitions to include:

- a performance work statement that describes outcome-oriented requirements in terms of results required rather than the methods of performance of the work;
- measurable performance standards describing how to measure contractor performance in terms of quality, timeliness, and quantity; and
- the method of assessing contract performance against performance standards, commonly accomplished through the use of a quality assurance surveillance plan.<sup>4</sup>

A 1998 Office of Federal Procurement Policy (OFPP) study on performance-based contracts—based largely on contracts for basic services, such as janitorial or maintenance services—showed that a number of anticipated benefits had been achieved, including reduced acquisition costs, increased competition for contracts, and improved contractor performance.<sup>5</sup> However, implementing a performance-based approach is often more difficult for complex acquisitions, such as information technology, than it is for basic services, because agencies begin with requirements that are less stable, making it difficult to establish measurable outcomes. Such complex acquisitions may need to have requirements and performance standards continually refined throughout the life-cycle of the acquisition for a contractor to deliver a valuable service over an extended period of time. OFPP also has noted in policy that certain types of services, such as research and development, may not lend themselves to outcome-oriented requirements.

To encourage agencies to apply a performance-based approach to service acquisitions, the Office of Management and Budget (OMB) established governmentwide performance targets, which increased to 50 percent of eligible service contract dollars for the current fiscal year. In January 2007, the congressionally mandated Acquisition Advisory Panel reported that performance-based acquisition has not been fully implemented in the Federal Government, despite OMB encouragement, and recommended that OMB adjust the governmentwide target to reflect individual agency assessments and plans.<sup>6</sup> In May 2007, OMB's OFPP issued a memo providing that agencies, at a minimum, were expected to meet targets established and report on them in their management plans. In response, DHS's CPO established a performance-based target of 25 percent for fiscal year 2007, increasing to 40 percent by fiscal year 2010, that was included in DHS's Performance-Based Management Plan. The Acquisition Advisory Panel also recommended that OFPP issue more explicit implementation guidance and create an "Opportunity Assessment" tool to help agencies identify when they should consider using this acquisition method.

<sup>3</sup>Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398 § 821(a) (2000) required that the Federal Acquisition Regulation (FAR) be revised to establish a preference for the use of a performance-based approach in the acquisition of services, which was done in FAR 37.102(a), providing that performance-based acquisition is the preferred method for acquiring services and generally is to be used to the maximum extent practicable. In addition, this act established a preference for using firm fixed-price contracts or task orders—where a specified price is paid regardless of the contractor's incurred costs—when using a performance-based approach for service acquisitions.

<sup>4</sup>FAR 37.601; FAR 37.602(b); FAR 37.604. A fourth element, performance incentives, is required where appropriate.

<sup>5</sup>Office of Management and Budget, Office of Federal Procurement Policy, *A Report on the Performance-Based Service Contracting Pilot Project*, May 1998.

<sup>6</sup>Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Congress, January 2007.

## REQUIREMENTS AND STANDARDS DEFINITION INFLUENCE PROGRAM OUTCOMES

Our work has found that performance-based acquisitions must be appropriately planned and structured to minimize the risk of the government receiving services that are over cost estimates, delivered late, and of unacceptable quality.<sup>7</sup> Specifically, we have emphasized the importance of clearly defined requirements to achieving desired results and measurable performance standards to ensuring control and accountability. Prior GAO and DHS Inspector General reviews of complex DHS investments using a performance-based approach point to a number of shortcomings. For example, in June 2007, we reported that a performance-based contract for a DHS financial management system, eMerge2, lacked clear and complete requirements, which led to schedule delays and unacceptable contractor performance.<sup>8</sup> Ultimately, the program was terminated after a \$52 million investment. In March 2007, we similarly reported that the Coast Guard's performance-based contract for replacing or modernizing its fleet of vessels and aircraft, Deepwater, had requirements that were set at unrealistic levels and were frequently changed.<sup>9</sup> This resulted in cost escalation, schedule delays, and reduced contractor accountability. The DHS Inspector General has also indicated numerous opportunities for DHS to make better use of sound practices, such as well-defined requirements.<sup>10</sup>

Consistent with our prior work, definition of requirements and performance standards influenced outcomes for the eight complex investments we reviewed. In using a performance-based approach, sound contracting practices dictate that required contract outcomes or requirements be well-defined, providing clear descriptions of results to be achieved. While all eight contracts for these investments had outcome-oriented requirements, the requirements were not always well-defined.<sup>11</sup> Further, contracts for half of the investments did not have a complete set of measurable performance standards. Appendix I provides a summary of our analysis of the requirements, performance standards, and outcomes for the eight performance-based contracts for major investments we reviewed.

Complex investments with contracts that did not have well-defined requirements or complete measurable performance standards at the time of contract award or start of work experienced either cost overruns, schedule delays, or did not otherwise meet performance expectations. For example, contracts for systems development for two CBP major investments lacked both well-defined requirements and measurable performance standards prior to the start of work and both experienced poor outcomes. The first, for DHS's Automated Commercial Environment (ACE) Task Order 23 project—a trade software modernization effort—was originally estimated to cost \$52.7 million over a period of approximately 17 months.<sup>12</sup> However, the program lacked stable requirements at contract award and, therefore, could not establish measurable performance standards and valid cost or schedule baselines for assessing contractor performance. Software requirements were added after contract award, contributing to a project cost increase of approximately \$21.1 million, or 40 percent, over the original estimate. Because some portions of the work were delayed to better define requirements, the project is not expected to be completed until June 2009—about 26 months later than planned.

The second, Project 28 for systems development for CBP's Secure Border Initiative (SBI*net*)—a project to help secure a section of the United States-Mexico border using a surveillance system—did not meet expected outcomes due to a lack of both well-defined requirements and measurable performance standards. CBP awarded the Project 28 contract planned as SBI*net*'s proof of concept and the first increment of

<sup>7</sup> GAO-07-20.

<sup>8</sup> GAO, *Homeland Security: Departmentwide Integrated Financial Management Systems Remain a Challenge*, GAO-07-536 (Washington, D.C.: June 21, 2007).

<sup>9</sup> GAO, *Coast Guard: Status of Efforts to Improve Deepwater Program Management and Address Operational Challenges*, GAO-07-575T (Washington, D.C.: Mar. 8, 2007).

<sup>10</sup> See for example, Department of Homeland Security Inspector General, *Major Management Challenges Facing the Department of Homeland Security*, OIG-08-11 (Jan. 2008), and Department of Homeland Security Inspector General, *Transportation Security Administration's Information Technology Managed Services Contract*, OIG-06-23 (Feb. 2006).

<sup>11</sup> FAR 2.101 specifically provides that a performance work statement for performance-based acquisitions describe the required results in clear, specific, and objective terms with measurable outcomes.

<sup>12</sup> Begun in 2001, ACE is intended to replace and supplement existing cargo processing technology and will be developed and deployed in a series of increments. The goals of ACE include: (1) Supporting border security by enhancing analysis and information sharing with other government agencies and providing CBP with the means to decide before a shipment reaches the border if it should be targeted or expedited and (2) streamlining time-consuming and labor-intensive tasks for CBP personnel and the trade community through a national trade account and single Web-based interface. Task Order 23 was the sole focus of our review.

the fielded *SBI*net system before the overall *SBI*net operational requirements and system specifications were finalized. More than 3 months after Project 28 was awarded, DHS's Inspector General reported that CBP had not properly defined *SBI*net's operational requirements and needed to do so quickly to avoid rework of the contractor's systems engineering. We found that several performance standards were not clearly defined to isolate the contractor's performance from that of CBP employees, making it difficult to determine whether any problems were due to the contractor's system design, CBP employees, or both. As a result, it was not clear how CBP intended to measure compliance with the Project 28 standard for probability of detecting persons attempting to illegally cross the border. Although it did not fully meet user needs and its design will not be used as a basis for future *SBI*net development, DHS fully accepted the project after an 8-month delay.<sup>13</sup> In addition, DHS officials have stated that much of the Project 28 system will be replaced by new equipment and software.

Conversely, we found that contracts with well-defined requirements linked to measurable performance standards delivered results within budget and provided quality service. For example, contracted security services at the San Francisco International Airport for TSA's Screening Partnership Program had well-defined requirements, and all measurable performance standards corresponded to contract requirements—an improvement from our prior reviews of the program.<sup>14</sup> The requirements for gate, checkpoint, and baggage screening services clearly stated that the contractor should use technology and staff to prevent prohibited items from entering sterile areas of the airport and should work to minimize customer complaints while addressing in a timely manner any complaints received. The performance standards assessed how often screeners could successfully detect test images of prohibited items in checked baggage; the percentage of audited records and inspected equipment, property, and materials that were well-kept, operational, and recorded on maintenance logs; and whether all new hires received the required training before assuming their screening responsibilities. In terms of expected outcomes, the contractor achieved a 2.2 percent cost underrun during the first 5 months of the contract and exceeded most requirements.

#### UNRELIABLE DATA AND LACK OF MANAGEMENT REVIEW CONSTRAIN OVERSIGHT

In managing its service acquisitions, including those that are performance-based, DHS has faced oversight challenges, including a lack of reliable data and systematic management reviews. DHS contracting and program representatives told us that they use a performance-based approach to the maximum extent practicable. However, DHS does not have reliable data—either from the Federal Procurement Data System—Next Generation (FPDS-NG), the governmentwide data base for procurement spending, or at a departmentwide level—to systematically monitor or evaluate or report on service acquisitions, including those that are performance-based. Reliable data are essential to overseeing and assessing the implementation of contracting approaches, acquisition outcomes, and making informed management decisions. Moreover, the Chief Procurement Officer (CPO), who has responsibility for departmentwide procurement oversight, has begun some initial review of performance-based service acquisitions, but has not conducted systematic management assessments of this acquisition method.

Our analysis of information provided by contracting representatives at the Coast Guard, CBP, Immigration and Customs Enforcement (ICE), and TSA showed that about 51 percent of the 138 contracts we identified in FPDS-NG as performance-based had none of the required performance-based elements: a performance work statement, measurable performance standards, and a method of assessing contractor performance against performance standards. Only 42 of the 138 contracts, or 30 percent, had all of the elements, and about 18 percent had some but not all of the required performance-based acquisition elements (see table 1).

<sup>13</sup> GAO, *Secure Border Initiative: Observations on the Importance of Applying Lessons Learned to Future Projects*, GAO-08-508T (Washington, D.C.: Feb. 27, 2008).

<sup>14</sup> GAO, *Aviation Security: Preliminary Observations on TSA's Progress to Allow Airports to Use Private Passenger and Baggage Screening Services*, GAO-05-126 (Washington, D.C.: Nov. 19, 2004), and *Aviation Security: Progress Made to Set Up Program Using Private-Sector Airport Screeners, but More Work Remains*, GAO-06-166 (Washington, D.C.: Mar. 31, 2006).

TABLE 1.—REVIEW OF PERFORMANCE-BASED ELEMENTS ON SELECTED CONTRACTS

Performance-based Elements	Coast Guard	Customs and Border Protection	Immigration and Customs Enforcement	Transportation Security Administration	Total Contracts	Percentage of Total Contracts
All elements	18	3	0	21	42	30.4
Some elements .....	16	0	5	4	25	18.1
No elements	20	5	34	12	71	51.5
Total	54	8	39	37	138	100.0

Source: GAO analysis of DHS review of 138 contracts coded as performance-based in FPDS-NG.

Lacking reliable FPDS-NG data, reports on the use of performance-based contracts for eligible service obligations are likely inaccurate. Data reported on the use of performance-based contracts by service types—ranging from basic, such as janitorial and landscaping, to complex, such as information technology or systems development—requested by OFPP in July 2006—are also likely misleading. The Acquisition Advisory Panel and DHS's CPO also have raised concerns regarding the accuracy of the performance-based designation in FPDS-NG. The Acquisition Advisory Panel's 2007 report noted from its review at 10 Federal agencies that 42 percent of the performance-based contracts the panel reviewed had been incorrectly coded.

Inaccurate Federal procurement data is a long-standing governmentwide concern. Our prior work and the work of the General Services Administration's Inspector General have noted issues with the accuracy and completeness of FPDS and FPDS-NG data.<sup>15</sup> OMB has stressed the importance of submitting timely and accurate procurement data to FPDS-NG and issued memos on this topic in August 2004 and March 2007. Accurate FPDS-NG data could facilitate the CPO's departmentwide oversight of service acquisitions, including those that are performance-based.

At a departmentwide level, CPO representatives responsible for procurement oversight indicated that they have not conducted systematic assessments including costs, benefits, and other outcomes of a performance-based approach. To improve the implementation of performance-based acquisitions, CPO representatives established a work group in May 2006 to leverage knowledge among DHS components. They also noted that they are working with OFPP to develop a best practices guide on measurable performance standards and to gather good examples of performance-based contracts. In addition, the CPO has implemented a departmentwide acquisition oversight program, which was designed with the flexibility to address specific procurement issues, such as performance-based service acquisitions, and is based on a series of component-level reviews.<sup>16</sup> Some initial review of performance-based acquisitions has begun under this program, but management assessment or evaluation of the outcomes of this acquisition method has not been conducted.

#### CONCLUSION AND RECOMMENDATIONS

Consistent with Federal procurement policy, DHS has emphasized a performance-based approach to improve service acquisition outcomes. However, in keeping with our prior findings, DHS's designation of a service acquisition as performance-based was not as relevant as the underlying contract conditions. Sound acquisition practices, such as clearly defining requirements and establishing complementary measurable performance standards, are hallmarks of successful service acquisitions. In the cases we reviewed as well as in prior findings where these key elements were lacking, DHS did not always achieve successful acquisition outcomes. The report we are releasing today recommends that the Secretary of Homeland Security take several actions to increase DHS's ability to achieve improved outcomes for its service acquisitions, including those that are performance-based. These actions include rou-

<sup>15</sup> For example, GAO, *Reliability of Federal Procurement Data*, GAO-04-295R (Washington, D.C.: Dec. 30, 2003); GAO, *Improvements Needed to the Federal Procurement Data System—Next Generation*, GAO-05-960R (Washington, D.C.: Sept. 27, 2005); and General Services Administration Inspector General, *Review of the Federal Procurement Data System—Next Generation (FPDS-NG)*, Report Number A040127/O/T/F06016 (March 2006).

<sup>16</sup> GAO, *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, GAO-07-900 (Washington, D.C.: June 2007).

tinely assessing requirements for complex investments to ensure that they are well-defined and developing consistently measurable standards linked to those requirements; systematically evaluating outcomes of major investments and relevant contracting methods; and improving the quality of FPDS-NG data to facilitate identifying and assessing the use of various contracting methods. DHS generally concurred with our recommendations, noting some departmental initiatives under way to improve acquisition management. However, the department's response did not address how the CPO's process and organizational changes at the departmental level will impact component-level management and assessment of complex acquisitions to improve outcomes. Improving acquisition management has been an ongoing challenge since the department was established and requires sustained management attention.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the committee may have at this time.

## APPENDIX I.—KEY CHARACTERISTICS OF EIGHT PERFORMANCE-BASED SERVICE CONTRACTS

Major Investment by Component	Service	Well-defined Requirements <sup>(1)</sup>	Measurable Performance Standards <sup>(2)</sup>	Outcomes
<b>Coast Guard:</b>				
Response Boat Medium ....	Research, analysis, and financial and information management.	(3) .....	(3) .....	Contractor submitted all required documentation on time; met project management quality standards; and maintained electronic archiving and restoration standards.
<b>Customs and Border Protection:</b>				
Automated Commercial Environment.	Trade systems software development (task order 23).	(5) .....	(4) .....	Costs increased by 40 percent (\$21.1 million). More than a year behind schedule; unplanned software redesign.
National Prime Integration	Maintenance of equipment used at border crossings, airports, and seaports.	(3) .....	(4) .....	Costs increased by 53 percent (\$24 million). Maintenance wait times were longer than planned.
<i>SBI<sup>net</sup></i> .....	Project 28 border surveillance and systems development and fielding.	(5) .....	(4) .....	DHS rejected initial acceptance of Project 28. The project was delayed 8 months with final acceptance in February 2008. DHS noted that the contractor met the requirements, but the project did not fully meet DHS's needs and the technology will not be replicated in future SBI <sup>net</sup> development.
<b>Transportation Security Administration:</b>				
Electronic Baggage Screening Program.	Maintenance for explosive trace detection machines.	(3) .....	(3) .....	Contractor exceeded the performance standard for machine downtime with a score 1 hour less than required and operated at cost through the second quarter of fiscal year 2007.
Screening Partnership Program.	Passenger screening services at one airport.	(3) .....	(3) .....	Contractor exceeded most performance standards; for example, threat detection performance and false alarm rates exceeded the quality standards. Contractor had cost overrun of 2.2 percent (\$677,000).



Secure Flight .....	Maintaining data base used to screen airline passenger data.	( <sup>3</sup> ) .....	( <sup>5</sup> ) .....	Initial contractor planning reports were inadequate; system experienced operational downtime; surveillance reports identified poor contractor performance. Contractor generally met timeframes and delivered within budget.
Transportation Worker Identification Credential.	Issuing identification credentials to maritime workers.	( <sup>3</sup> ) .....	( <sup>3</sup> ) .....	Outcomes not available at the time of our review.

Source: GAO analysis.

(<sup>1</sup>) Well-defined requirements should provide clear descriptions of results to be achieved at the time of the award or start of work and primary requirements should not change substantially following contract award.

(<sup>2</sup>) The set of measurable performance standards for a contract enables the government to assess all aspects of the contractor's work in terms of quality, timeliness, and quantity. The contract's performance standards are also linked to the requirements.

Legend: (<sup>3</sup>) Contract met or mostly met the criteria; (<sup>4</sup>) contract partially met the criteria; (<sup>5</sup>) contract did not meet the criteria.

Chairman THOMPSON. Thank you very much.

It is my intention to complete the witness testimony. We will recess the committee and come back for questions.

Ms. Reed, for 5 minutes please.

**STATEMENT OF ANNE F. REED, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, ACQUISITION SOLUTIONS**

Ms. REED. Thank you, Chairman Thompson and members of the committee. I represent Acquisition Solutions, a company that helps public sector organizations leverage the acquisition process to better achieve their public mission results.

I commend and thank the committee for holding this hearing to examine how the Department of Homeland Security can best use the principles of performance-based acquisition to secure the Nation and our infrastructure.

Our commitment to performance-based acquisition as a company extends back more than a decade. We were able to be the industry partner on the interagency team that first developed and documented the seven steps to performance-based acquisition, an innovative methodology endorsed by the Office of Federal Procurement Policy as guidance to promote the use of performance-based acquisition throughout the Federal Government.

Through our more than 12 years of research, training and consulting work with acquisition professionals in the Federal arena, we have gained a number of insights into best practices and we understand more about what the factors are that increase risk when you implement performance-based acquisition. So my observations today are drawn from our experiences, as well as our interactions with the government professionals who are performing performance-based acquisitions.

I also just want to take a brief moment, since this is Public Service Recognition Week, to acknowledge the performance of the acquisition professionals in Homeland Security, as well as across the government. While not the topic of the hearing today, the acquisition workforce is somewhat stressed, and I really want to commend each of the individuals who work in this arena.

I agree with my fellow panelists that the focus of a performance-based acquisition is around accountability and around the mission results, which means you have to understand what the objectives are in the beginning. So it is not just about compliance. It really is about knowing what the objectives are and being able to deliver solutions that will meet the ultimate program direction.

The Federal acquisition regulation does define the process as having only three key elements: outcomes focused on results, rather than compliance; measurable performance standards; and methods of assessing contractor performance. The seven steps goes further than that and develops an approach that focuses on building communications channels, both within the agency looking at integrated project teams so that you understand from across the department what the objectives are.

There is a common meeting of the mind on what outcomes you are seeking from that particular contract, and then developing communication channels with industry to, No. 1, understand the art of possible solutions, but No. 2, to help industry more thoroughly un-

derstand what outcomes government is seeking so that when they propose those solutions and innovative approaches, they are doing so with the full slate of information.

It is this collaborative process that we believe really reduces the risk in complex acquisitions. It does create an opportunity for transformational solutions, which are often lost if we continue to use an acquisition process that is just like the one that has been used for the last 25 years or 30 years. You lose that opportunity for innovation and industry being able to bring in solutions that might not otherwise be understood or experienced by government.

We also believe that it is critically important to plan for post-acquisition management. A significant investment needs to be made even as you are preparing for the acquisition to develop the capacity within government to measure and monitor the performance and to align the government's procurement and program office with the contractor's program office. Failure to make that investment in sufficient time also is one of the major risk factors in a performance-based acquisition.

We heartily endorse the use of the quality assurance surveillance plans. We actually recommend that industry be involved in preparing those plans and that even that be a collaborative effort. We also strongly endorse the need for training, and not just at the beginning of the acquisition, but even all the way through the life-cycle of the program because people change.

Thank you.

[The statement of Ms. Reed follows:]

PREPARED STATEMENT OF ANNE F. REED

MAY 8, 2008

Chairman Thompson, Ranking Member King, and members of the committee, I represent Acquisition Solutions, Inc. (Acquisition Solutions), a company that helps public-sector organizations leverage the acquisition process to better achieve government missions. I commend the Chairman and Ranking Member for holding this hearing to examine how the Department of Homeland Security can best use the principles of performance-based acquisition (PBA) to secure our Nation, its people, and our infrastructure and economy.

Thank you for this opportunity to testify on a topic for which we have an abundance of both experience and passion. Our commitment to performance-based approaches to acquisition in the public sector extends back many years. Acquisition Solutions' research, training, and consulting work with acquisition professionals over the past decade have yielded insights into best practices—as well as practices or factors that increase risk—in implementing performance-based acquisition. My testimony today offers a basic overview of the key tenets of PBA, challenges to its implementation, and keys to success based not only on our corporate experience but also on the insight and knowledge obtained from government acquisition professionals who have front-line practical experience implementing PBA.

Inasmuch as this is Public Service Recognition Week, let me also take a moment to recognize all those dedicated public servants who support the government's acquisition processes. While not the topic of this hearing, today's acquisition workforce confronts many challenges that also affect the government's ability to implement PBA. We all owe a debt of gratitude to these hard-working professionals who do their best every day to meet the complex demands of today's dynamic Federal acquisition process.

WHAT IS PERFORMANCE-BASED ACQUISITION?

What is performance-based acquisition? The Federal Acquisition Regulation (FAR) defines PBA as "an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed."

“For example, an agency sought help promoting a Federal program to increase public participation. The agency established an objective of increasing public participation by 5 percent annually and solicited proposals for help in promoting the program to achieve that objective. In the words of the agency project manager, ‘[F]ederal bureaucrats don’t know much about advertising. That’s not what we do. So let’s hire people who know what they’re doing, who are tried and tested.’ Several vendors competed for the contract offering a variety of approaches to the promotional campaign as well as to how to track results. The winning contractor has proven an exemplary partner, and the contract has enabled the agency to exceed its goals for increased participation.”

The key, of course, is holding the contractor accountable for achieving the results proposed and ensuring that the results proposed are consistent with the program’s performance objectives.

The FAR defines performance-based acquisitions as having three mandatory elements: (1) Work stated in terms of outcomes or results, rather than a stated method of performance; (2) measurable performance standards; and, (3) a method of assessing contractor performance. A recommended fourth element is the use of appropriate performance incentives. The first three elements comprise a “litmus test” for determining whether a solicitation or contract truly is performance-based. The FAR permits agencies to use either a performance work statement (PWS) or a statement of objectives (SOO). In response to a SOO, offerors develop performance work statements to reflect their respective proposed solutions to achieve the stated objectives.

#### THE PERFORMANCE-BASED SEVEN STEPS PROCESS

Acquisition Solutions was the industry partner on the interagency team that developed the original Seven Steps to Performance-Based Acquisition guide (focused on the acquisition of services). That innovative methodology prescribed the following seven steps for success with PBA:

1. Establish an integrated project team;
2. Describe the problem that needs solving;
3. Examine private-sector and public-sector solutions;
4. Develop a performance work statement or statement of objectives;
5. Decide how to measure and manage performance;
6. Select the right contractor;
7. Manage performance.

The Office of Federal Procurement Policy has endorsed the Seven Steps approach to PBA as guidance to promote the use of PBA throughout the Federal Government.

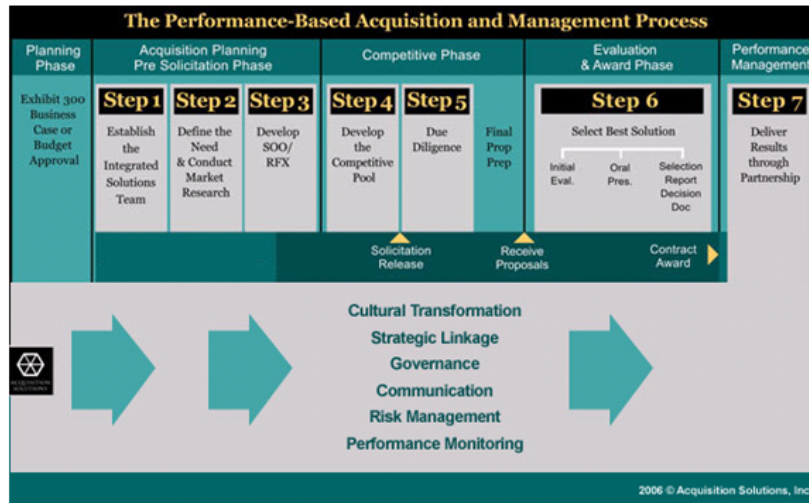
The intent of the Seven Steps guide is to make the concept of performance-based acquisition accessible and logical for all and to shift the paradigm from traditional “acquisition think” and simple contract compliance to an environment of collaborative, performance-oriented teamwork with a focus on program performance, improvement, innovation, and accountability.

Performance-based acquisition offers the potential to dramatically transform the nature of service delivery and permit the Federal Government to tap the enormous creative energy and innovative nature of private industry. How can this be done? By implementing the Seven Steps approach—combined with what we call the Six Disciplines of Performance-based Project Management:

1. Cultural Transformation;
2. Strategic Linkage;
3. Governance;
4. Communication;
5. Risk Management;
6. Performance Management.

We emphasize the Six Disciplines of Performance-based Project Management because contract award represents just the beginning of the acquisition life cycle—success is defined by achievement of the program objective.

The following chart represents the sequence of the Seven Steps as refined by and interwoven with the Six Disciplines.



In short, the Seven Steps methodology takes a life-cycle approach that operates on the premise that agencies fare best when they contract for results instead of mere compliance with predetermined government solutions. The acquisition process should focus on what the contractor must deliver to support mission accomplishment, not dictate how the contractor should accomplish the work.

“In the marketing contract example mentioned previously, the agency described its objective as a 5 percent increase in public participation in the program and looked to the marketing industry for how to promote the program to generate that increase. The agency monitors performance against the desired results of the marketing program, that is, in terms of its effect on participation levels. The agency and the contractor identify issues and opportunities through constant communication. They work together to resolve issues and capture opportunities. The contract has enabled the agency to exceed expectations for increasing participation in the program.”

#### OPPORTUNITIES AND CHALLENGES

So if the legal and regulatory intent for performance-based acquisition are clear—to structure an acquisition around the results to be achieved—and there is a defined methodology and defined disciplines for performance, why are there challenges? Federal policy has encouraged performance-based contracting for more than 25 years. Yet progress has been slow for many reasons.

*PBA offers a structured, collaborative process to reduce risk in complex acquisitions.* Legislative reforms have mandated a more mission-focused acquisition process and offered the potential to speed the contracting process, but they did not make Federal acquisition simpler. The scale, scope, and urgency of programs are greater than ever before. Addressing these monumental challenges in compressed timeframes often demands service-based solutions that involve developmental components and draw on contributions across many industry sectors, which compels multiple contractors to join in complicated teaming alliances. Acquisition success also often requires communications on highly sensitive and controversial topics that involve coordination with many stakeholder groups, including specific constituencies both inside and outside the government. Following the Seven Steps process with the Six Disciplines of Performance-based Project Management promotes alignment around objectives that all stakeholders agree constitute “success” and increases transparency in the process, which lays the foundation of accountability for both the government and the contractor.

*PBA creates an opportunity for cultural transformation, to focus on results.* Making the shift to focus on outcomes versus specified tasks or levels of effort requires a transformation in culture, perspective, and thinking. Without training and other support for implementing PBA techniques, many government acquisition professionals still follow a procurement process that first requires the development of a detailed statement of work or a specification that prescribes how the contractor

should perform the work and then rely on monitoring compliance with that specification to manage execution. Many who take on this task believe a “tight spec is a good spec,” that the contractor must be told exactly what to do, how to do it, what labor categories to provide, what minimum qualifications to meet, and how many hours to work. But what if the contractor follows the government’s instructions to the letter and the result is still unacceptable? It is the government’s tightly specified “solution” that is at fault, not the contractor’s performance. The government and, ultimately, the public bear the risk and consequences of failure.

*PBA focuses on achieving clarity and consensus on objectives that foster alignment of all stakeholders around common goals to enable acquisitions to move forward efficiently to successful execution.* In the rush to “get to award”—a rush sometimes imposed on acquisition professionals—agencies often do not invest enough time up front to define clear objectives that take into account all stakeholder interests. Getting alignment on objectives facilitates defining requirements and establishing metrics directly linked to delivering results that all stakeholders agree constitute “success.”

Recognizing that the contracting community cannot implement performance-based contracting on its own, changes made to FAR part 37 in January 2006 mandated that program offices describe government needs using PBA methods. These changes acknowledged that, in fact, many stakeholders have an impact on the execution of any program, particularly in the case of large and complex services acquisition programs.

Laws, policies, and regulations have transformed the acquisition process dramatically, to operate with a mission-based and program-based focus. Accordingly, acquisition teams must get input and draw on the skills of individuals from many different functional areas. In addition to technical and contracting staff, for example, program, financial, public affairs, and oversight offices add value to successful acquisition teams. These individuals add fresh perspective, insight, energy, and innovation to the process—but they may lack some of the background and experience in contracting and program management that acquisition often requires.

On the industry side, many companies have been frustrated by a system that doesn’t allow them to offer or deliver their best solutions. However, others have become comfortable with the old process of simply giving the customers what they ask for—not necessarily what they need. Under that traditional approach, accountability for program results rests solely with the government, and the contractor is accountable only for meeting the contract specifications. Performance-based acquisition practices call for a different understanding of acquisition by both government and industry, one that promotes a more equitable allocation of risk and responsibility, where success requires a partnership between the government and the contractor to deliver results.

*Planning for and investing in post-award management lays the foundation for an effective partnership for PBA success in the critical delivery phase of the acquisition life cycle.* The intense focus on contract formation and award too often leads agencies to underestimate the challenge of managing to deliver results, as well as the need to identify, assess, monitor, and manage risks in performance. We are struck by the fact that when challenges emerge, many involve managing the implementation of contracts after award. Unfortunately, the Federal Government is at least as short on experienced program and project managers as it is short on contracting officers and contract specialists.

“Regarding particularly complex contracts, Federal acquisition professionals have shared sentiments such as, ‘This was new. It was developmental. It was risky. And we assumed up front that [being] performance-based, the contractor comes in, proposes a solution, we evaluate the solution, we accept it, we provide money for it, we set up an incentive fee structure, and then we take a step back. Well, as it turns out there was no taking a step back. As a matter of fact one of the issues is that it required more resources to manage than anyone expected.’”

To help improve the acquisition community’s understanding of PBA, including managing risk in complex programs, Acquisition Solutions has stimulated discussions and debate focused on the experiences of those who have awarded performance-based acquisitions and dealt with the challenges of managing performance.

“In one example, the government program manager shared that ‘We knew that we needed to find a way to manage costs and schedule, and we talked about an Earned Value Management System. But I think that we really didn’t put it into place. I would say those elements that were really needed for this type of [contract] . . . from a risk management plan to an issue resolution to a change management plan. We needed to have put [those] in place before hand, and started that, other than just talking about and setting up a framework.’”

We have captured these experiences to share through publications and at conferences with the larger community seeking to understand and implement performance-based acquisition. Indeed, these lessons learned can apply to conducting and managing complex procurements of any type.

#### KEYS TO PERFORMANCE-BASED SUCCESS

Let me summarize some of the key findings and observations we have collected with respect to PBA.

##### *Take Time To Analyze and Understand the Real Requirement and Real Objectives*

Start with the end in mind. One practitioner said, “We didn’t know at the beginning whether we had a project management requirement, an information technology requirement, or an engineering requirement.” As it turned out, the requirement was all those things and more. Another observed that this is really hard work and may at times require a champion with highly developed facilitation skills. He observed, “People who can’t define requirements also can’t define objectives.” Following the Seven Steps process and investing the time up front to get clarity and consensus on objectives facilitates defining clear requirements and establishing metrics that promote alignment, to enable the acquisition team to move forward to meet those objectives efficiently and effectively.

##### *Take Time With Market Research, Especially if the Acquisition Will Lead to Transformational Change*

Learn from the experiences of others to determine what has worked well and what has not. Market research with industry and similarly situated organizations provides Federal agencies with a powerful tool to avoid “reinventing the wheel”—to capitalize on past success and avoid pitfalls that others have suffered. In our discussions with Federal PBA practitioners, one practitioner credited his agency’s year of market research as important to transformational change management. But agencies often believe they already have done their homework. Another practitioner observed that his agency had at first considered more market research to be wasted time, but it ultimately helped inform the development of the statement of objectives and “it paid off in the end.” The highly successful performance-based acquisition won kudos from the program office.

##### *Plan for Post-Award Contract Management at the Start*

FAR 7.105 provides that written acquisition plans must address contract administration, but mission-critical performance-based buys require much more comprehensive planning. We also find higher PBA success rates when agencies employ performance-based project management disciplines from the outset and maintain continuity of the project team throughout the acquisition life cycle. I have described an approach to performance-based management that sets forth six disciplines: cultural transformation, strategic linkage, governance, communication, risk management, and performance monitoring. Planning for—and beginning to execute—these disciplines begins early in the acquisition life cycle.

For example, doing a performance-based acquisition lays the foundation for cultural transformation. It takes training and readiness on many levels: an understanding of performance-based techniques, a ready attitude, a well-prepared team (with structure, policies, and a communications plan), and the management skills to oversee performance-based contract work. Other success factors include: (1) Evaluating the competing contractors’ proposed approaches to contract performance management and measurement; and, (2) keeping the critical members of the government team on the project after award. Strategies for governance, risk management, and performance monitoring are especially important during the pre- and post-award phases. To ensure a smooth startup and to lay the foundation for delivery success, the acquisition plan must include investment to ensure that the agency has adequate resources to staff program and contract management functions from the outset after award.

##### *Take Necessary Steps To Ensure Clarity in What the Government Is Buying Under the Contract in Terms of Performance, Cost, and Schedule*

Pay close attention to the contractor’s proposed work breakdown structure to ensure that it reflects a thoughtful plan with adequate resources to manage performance risks and deliver results in line with agency objectives. This evaluation is critical. One practitioner said, “Once contract performance was under way, we weren’t sure what we agreed to.” That required a lot of discussions. Another said, “The contractor submitted a work breakdown structure that didn’t address refinement of the requirements.” Another observed that “a critical part of a performance-based evalua-

tion is the quality of the contractor's work breakdown structure and what it conveys about performance risk. Is it comprehensive, and does it identify a well-conceived approach to getting the desired outcome results? Does it reflect an understanding of the agency's objectives?"

Are you buying the work activities—generally not under a performance-based contract—or are you buying the results of those activities, in the terms of performance metrics, specified results or outcomes, or service-level agreements? Payment should be tied to results, not moving through a list of planned activities. Another practitioner noted, "If the contract is structured for payment based on results, and not for activities, then the contractor is on the hook to achieve the results. The risk of performance is the contractor's." Metrics must be established before contract award, preferably in the heat of competition, and link directly to achieving the desired results.

*Make Sure the Contractor's Incentives Are Aligned With What's Best for the Agency and the Program*

There is an old adage that says, "What gets measured gets done." It is critical, therefore, to take care in crafting the incentives for a performance-based contract, so that the incentives appropriately motivate the contractor to deliver the desired results. Even better than aligned objectives are objectives that become an inherent part of the contractual structure.

"One practitioner told us, 'The best incentive is one that is built in. A great example was a contract for loan servicing. The objective was for a loan-servicing contractor to ensure that mortgage loan payments were collected from the debtors on time. We were giving a lot of thought to how we should incentivize the contractor to reduce the delinquent loans. Then we learned [through market research with industry leaders] that the industry practice is that the loan server only gets paid for performing loans! In the commercial market, they receive a percentage of every loan payment and therefore have a built-in incentive to maximize the number of performing loans. This negated the need for extensive award or incentive fee boards and calculations. This was a real eye-opener . . . and clearly an inherent incentive.'

"Another practitioner said, 'One way to ensure that incentives are appropriate to the effort is to encourage offerors to propose them. Many times, the incentives proposed will be more closely aligned with the desired outcomes than those the government would have crafted. It also is a great method to see if the offerors really understand the linkage between what they recommend be measured and the government's objectives. What they identify as measures and metrics, where they set the bar for performance, and the linkage between the metrics and the government's objectives are powerful discriminators in the source selection.'"

*Consider the Life-Cycle Implications of the Solution*

Some solutions have a long cost or logistics tail in their implementation. "We made companies responsible for design and development without considering maintenance," said one Federal practitioner. As a result, every vehicle delivered under that contract has multiple pumps, of various configurations and manufacturers, creating a logistics nightmare. "You must consider configuration standardization and control, maintainability, and logistics."

*Start Right, Provide Resources, and Manage Through It*

To ensure a smooth startup and lay the foundation for delivery success, agencies must devote adequate resources to staff program and contract management functions from the outset after award. Begin thinking about managing the contract early in the acquisition planning phase, and culminate the plans with a formal contract management plan that is reviewed during the contract's kick-off meeting immediately after award. Use that meeting to reiterate the governance model, communications strategy, risk management process, and performance monitoring approach.

From the moment of contract award, ask, "How are we going to be successful?" Monitor contractor performance beginning the day of contract award. If it appears there is not a shared understanding of performance, fix it immediately. In the cases discussed at our forum in which performance problems emerged, agency teams recognized the problem within the first few months and began to take action to correct it. One practitioner said his team had used monitoring tools and had found out faster than they would have otherwise that "the ship was about to hit the shoals."

*Manage Risk*

Organizations that practice PBA are more attuned to identifying, assessing, and managing risk than are compliance-based organizations. Under the compliance model, risk often is ambiguous; the contract simply requires the contractor to perform. However, if the government directs the work or micromanages the contractor,



who is responsible for failures? This question frequently is the crux of performance delays and contract disputes. Performance-based acquisition focuses on achieving results and highlights the need to manage risk. In the PBA environment, the government and contractor work together to identify, assess, and mitigate risks before problems occur.

The risks most likely to have a significant impact on the project need to be identified through analysis and should be prioritized, and someone needs to be assigned to develop mitigation actions. Then the risks must be tracked and reported on a regular basis.

*Understand and Plan for the Impact That Budgetary Issues Can Have on Your Performance-Based Contract*

While it is current policy that firm-fixed-price contracts are the preferred contract type (versus time-and-materials [T&M] contracts), there are some significant challenges inherent in funding a major fixed-price acquisition. Civilian agencies cannot incrementally fund fixed-price contracts. Yet the funding process often is not designed to fund major services acquisitions—such as systems acquisitions—up front.

“One Federal PBA practitioner noted, ‘We have a carefully negotiated quality assurance surveillance plan based on “go live” . . . so I can order pieces if I had to, but I’d lose the built-in incentives.’ She concluded that there is a ‘huge gap between theory and reality.’ These are unintended consequences from the budget cycle. The result is that Federal agencies continue to struggle with adjusting contracts to accommodate different funding levels from Congress—these changes result in longer performance periods and changed requirements, which increase costs.

“Another said, ‘Having to fully fund fixed-price contracts, we got that in spades. We were shifting from cost plus to a fixed price, so we had been incrementally funding. Then the [contracting officer] says, “you know you can’t incrementally fund this fixed-price contract.” We ‘reworked the stream’ and now award in September so we can fund the next year’s entire body of work.’

“A third practitioner indicated he had moved all his agency’s contract starts to January to avoid funding difficulties associated with continuing resolutions.”

Perhaps the greatest challenge is imposed by finance organizations that insist on quarterly (or in some instances monthly) allocations of operations and maintenance budgets. While this may be easier for the finance organizations, it raises havoc with contracting. Quarterly allocations force cost-plus or T&M contract types, as they are the only ones that can be incrementally funded. In addition, this funding allocation quadruples (or worse) the number of transactions the contracting office must process.

Agencies also have encountered a “color of money” issue. In one case, an agency evaluated and selected one offer as high technical, low cost, but despite major efforts to find a way to take advantage of the solution, the agency team was unable to “re-wicker the funding stream” to match the solution. One way to avoid this situation is to release funding information to contractors so you receive executable proposals.

*Get Offerors To Develop Quality Assurance Surveillance Plans*

Several practitioners told us that having each competing offeror develop a quality assurance surveillance plan (QASP) for monitoring and measuring performance was the “key” to their successful performance-based acquisitions. Rather than the government teams developing metrics for success and a plan for monitoring progress against those metrics, they required the contractor to put forward the metrics and plan. The measures proposed provide insight into how well the contractor understands the agency objectives and requirements while the rigor of the proposed monitoring plan provides a gauge of the offeror’s commitment to delivering a solution to meet those objectives.

“It was a good competition,” said one practitioner. “We got good cost, good technical, and a good QASP. It really showed who was serious. The performance-based acquisition unseated the long-term incumbent. Competition is your only friend.” Another said, “You get a good idea if they are serious based on what they put into their QASP.”

*Ensure the Government’s Team Is Trained and Incentivized To Manage the Contract Post-Award*

Program and contracting personnel must understand the government’s role and every incentive to promote the contractor’s success in meeting shared objectives. Meeting today’s complex challenges requires a combined effort from government and industry, with Federal agencies providing domain expertise about the mission and constraints on delivery to enable industry to tailor technology and leading practices to deliver the optimal solution. All members of the post-award management team—

program and contracting—should have training in PBA principles to ensure operation from shared perspective focused on working with the contractor to ensure results. Maintaining continuity on the government team and ensuring succession planning plays a critical role in enabling the government to take a consistently collaborative approach to managing performance throughout the acquisition life cycle.

For developmental-type efforts, the program team will be the source for most of the requirements. The implementation contractor will be working closely with the government, especially during the requirements build-out process. The quality of the end package is directly determined by the quality of the requirements and the software development process and resources being applied. Discipline is a must on both sides. “It does no good to have a [Capability Maturity Model] level 5 developer, if you are a level 0 user,” said one practitioner.

Employing the Six Disciplines of Performance-Based Management from the start and maintaining continuity on the government team throughout the acquisition life cycle helps agencies improve post-award contract management. In November 2006, the Partnership for Public Service issued an excellent report on this critical issue, titled “Creating Momentum in Contract Management.” Many Federal agencies, including the Department of Homeland Security, participated in this project, and the Government Accountability Office participated as an observer on the working group that developed the report. Implementing the practices and recommendations included in that report would represent a big step forward.

#### CONCLUSION

Performance-based acquisition is all about accountability and results. The Seven Steps to Performance-Based Acquisition endorsed by the Office of Federal Procurement Policy establishes a road map to successful PBA that has been proven to increase the chances for success. This road map includes the key elements of focusing on objectives and results; encouraging open communications through market research and enabling industry to provide solutions; and laying a solid foundation for effective post-award performance-based program management.

Contract award is not the end; it is the beginning of contract performance. A performance-based or result-oriented approach does not mean the government can abdicate responsibility for results. Rather, PBA contemplates that the government will focus intensely on what it knows best—its objectives—and look to industry partners to propose solutions—based on their experiences and knowledge of the marketplace—that will best meet those objectives. Yet, the ultimate key is held by the agency in its conduct of contract performance management.

It is precisely because today’s projects are so large and complex—and because the workforce needs to be sure their time is focused on increasing the chances for a successful outcome—that performance-based acquisition is such an important tool. In complex programs it often is impossible to know detailed requirements up front and therefore unrealistic to expect a straight path to the ultimate solution. Delivering results requires a collaborative partnership—the government working with the contractor to overcome challenges and seize opportunities throughout performance to achieve a shared goal.

Performance-based contracting and program management processes work when applied as intended with discipline and rigor. They keep the focus on mission outcomes and align government and the industry service provider in accountability for achieving common objectives to serve the public interest.

Chairman THOMPSON. You will have plenty of time to elaborate. I want to get through the testimony before we recess.

Mr. Chvotkin, for 5 minutes.

#### STATEMENT OF ALAN CHVOTKIN, EXECUTIVE VICE PRESIDENT AND COUNSEL, PROFESSIONAL SERVICES COUNCIL

Mr. CHVOTKIN. Mr. Chairman, thank you for your invitation and the opportunity to address the provocative question raised in the title of today’s hearing.

I submit that performance-based acquisition as a technique is neither the solution nor the cause of problems within DHS or other Federal agencies. I can tell you without fear of contradiction that a performance-based acquisition is among the hardest type of con-

tracts for the government to write and for a contractor to successfully compete for an execute.

It requires a knowledgeable, well-trained government acquisition workforce, including program managers, agency senior managers, and others. There is a lot of repetition and a lot of unanimity on this panel, I am sure, about those key elements. It also requires a willingness by the agency to work in partnership with the contractors awarded these contracts. It takes innovation and risk-taking by contractors as well.

When properly executed, performance-based acquisitions generate substantial benefits. A true performance-based approach incentivizes and rewards innovation and enables the government to identify and take advantage of solutions that might not otherwise have been evident.

A true performance-based acquisition also effectively balances the substantial risk assumed by the performing contractor with appropriate rewards. DHS, among others has been working diligently to create that balance and incentivize that innovation. While some have criticized performance-based acquisition because it appears to give contractors too much control over a program and its elements, the fact is that when such an acquisition is properly structured and managed, the government establishes the program requirements and retains full control over the program.

At the same time, one of the fundamental purposes of performance-based approaches is to enable the presentation of new and different solutions. Thus, it is essential that the contractor be given appropriate latitude to propose such solutions.

In short, from the perspective of the private sector, performance-based acquisition is a highly desirable form of contracting, yet is also highly risky and sometimes a feared strategy. Done right, it works exceptionally well. Done poorly, performance-based acquisition places inordinate attention and risk on the government and on the contractors.

Moreover, one cannot cherry-pick the elements that are critical to the success of a performance-based acquisition. It is a strategy with many intertwined parts, each of which must be properly executed. PBA is not a contracting exercise. It requires a broad, integrated strategy that relies on much more than the active involvement of a contracting officer.

The first element, the performance work statement, is perhaps the most important element of a PBA, and the single greatest predictor of success. The full involvement of senior managers within the agency and the multidisciplinary team led by the program manager or end-user are essential to the development of the performance statement. Without them, the prospect for success drops significantly because there is less chance that the performance work statement will accurately reflect the current state and the desired end-state.

It is also at this point that the government must be alert to the risk of morphing the performance work statement into a design spec that minimizes the opportunity for bidders to offer innovative approaches—one of the principal reasons for using the performance-based approach.

It is not whether a performance-based acquisition as a technique uniquely creates solutions or causes problems. Success or failure is not wholly dependent on the acquisition methodology. The better question to ask is whether the department or agency has the skills and resources to use this technique successfully.

As to the better answers, this committee is well aware of the management challenges facing the chief procurement officer at the department and its operating agencies. It starts, but certainly doesn't stop, with attracting and retaining qualified acquisition professionals and ensuring they have the tools.

The CPO has developed some useful internal oversight techniques. These are valuable steps that can have a beneficial impact on the department's acquisition over time, and we salute the department for the strides it has made to date and stand ready to support them in any way we can.

But more can and should be done. There needs to be an emphasis on the important role of program management within the department. There needs to be an acknowledgement of the impact on the business relationship between the agency and the contractor during the agency's internal formulation of the acquisition strategy. Finally, there needs to be up-front coordination with the independent oversight organizations so that their post-award reviews appropriately evaluate the contract.

Mr. Chairman, performance-based acquisitions are a valuable tool that must be available to the agency to bring innovation and experience to fulfilling an agency's mission. But PBA's require a different level of expertise in the agency, in the contractor, and in the oversight community. When done right, the results are impressive. We are committed to working with the department and others to finding those solutions and ensuring it is done right.

Thank you for the invitation to provide this testimony. I look forward to the committee's questions.

[The statement of Mr. Chvotkin follows:]

PREPARED STATEMENT OF ALAN CHVOTKIN

MAY 8, 2008

INTRODUCTION

Mr. Chairman, thank you for your invitation and the opportunity to appear before this committee to address the provocative question in the title of today's hearing: "Performance-Based Acquisitions: Creating Solutions or Causing Problems." I submit that performance-based acquisitions as a technique are neither the solution nor the cause of problems within the Department of Homeland Security or other Federal agencies. Understanding the characteristics of Federal performance-based acquisitions and the appropriate roles and responsibilities of each of the parties involved in the formation, execution and monitoring of these awards will raise a different set of question and likely lead this committee and others to a different set of answers.

I am Alan Chvotkin, Executive Vice President and Counsel of the Professional Services Council (PSC). PSC is the national trade association of the government professional and technical services industry. This year, PSC and the Contract Services Association of America merged to create a single, unified voice representing the full range and diversity of the government services sector. Solely focused on preserving, improving, and expanding the Federal Government market for its members, PSC's more than 330 member companies represent small, medium, and large businesses that provide Federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and

more. Together, the association's members employ hundreds of thousands of Americans in all 50 States.

I have been at the association for more than 7 years. Prior to my joining PSC, I had the privilege of working for a large telecommunications company where I had senior program management responsibility as well as supervising the contracting, pricing and proposal development teams. I have won and lost Federal performance-based acquisitions.

I can tell you without fear of contradiction that a performance-based acquisition is among the hardest types of contracts for the government to write and for a contractor to successfully compete for and execute. It requires a knowledgeable, well-trained, government acquisition workforce, including program managers, agency senior managers, and others who have a critical role in formulating the agency's requirements and desired outcomes. It also requires a willingness by the agency to work in partnership with the contractors awarded these contracts. It takes innovation and risk-taking by contractors, too.

It is also clear that when properly executed, performance-based acquisitions can and often do generate substantial benefits for the government agency. A true performance-based approach incentivizes and rewards innovation and enables the government to identify and take advantage of solutions that might not otherwise have been evident. A true performance-based acquisition also effectively balances the substantial risk assumed by the performing contractor with appropriate rewards.

The Department of Homeland Security, among others, has been working diligently to create that balance and incentivize that innovation. While some have criticized performance-based acquisition because it appears to give contractors too much control over a program and its elements, the fact is that when such an acquisition is properly structured and managed, the government establishes the program requirements and retains full control over the program. At the same time, one of the fundamental purposes of performance-based approaches is to enable the presentation of new and different solutions. Thus, it is essential that the contractor be given appropriate latitude to propose such solutions.

In short, from the perspective of the private sector, performance-based acquisition is a highly desirable form of contracting yet is also a highly risky and sometimes feared strategy. Done right, it works exceptionally well. However, done poorly, performance-based acquisition places inordinate attention and risk on the contractor. Moreover, one cannot cherry-pick the elements that are critical to the success of a performance-based acquisition. It is a strategy with many intertwined parts, each of which must be properly executed.

PSC has long been active in the congressional and regulatory discussions about performance-based acquisitions. In addition, from 2005 through 2007, we co-chaired a working group of six trade associations that participated extensively in presenting information to, and commenting on the work of, the Services Acquisition Reform Act Acquisition Advisory Panel.<sup>1</sup>

#### *What is a Performance-Based Acquisition?*

The Federal Acquisition Regulations define the term "performance-based acquisition" (PBA) to mean an acquisition structured around the results to be achieved as opposed to the manner in which the work is to be performed.<sup>2</sup> It is an "outcome-oriented" approach rather than a "design-oriented" approach. Congress has provided that the use of performance-based acquisition is the preferred method for acquiring services<sup>3</sup> and PBA methods should be used to the maximum extent practicable except for specifically designated services, such as construction or utilities, with separate contracting approaches.<sup>4</sup> The Office of Management and Budget's Office of Federal Procurement Policy (OFPP) issued a memorandum in May 2007, titled "Using Performance-Based Acquisition to Meet Program Needs—Performance Goals, Guidance and Training," that provided performance goals and PBA learning assets to ensure that the acquisition strategy is used effectively.<sup>5</sup> A second memo, issued in De-

<sup>1</sup>Created by Congress in Section 1423 of the Services Acquisition Reform Act (Title XIV of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108-136). Often referred to as the "1423" Panel or the Acquisition Advisory Panel, the Panel submitted its final report to Congress in January 2007. See <http://acquisition.gov/comp/aap/finalaapreport.html>.

<sup>2</sup>See Part 2.101 of the Federal Acquisition Regulations (FAR).

<sup>3</sup>See Section 821 of the fiscal year 2001 National Defense Authorization Act (Pub. L. 106-398).

<sup>4</sup>See FAR 37.102(a)(1).

<sup>5</sup>The memo is available at: [http://www.whitehouse.gov/omb/procurement/pbsa/pba\\_revised\\_052207.pdf](http://www.whitehouse.gov/omb/procurement/pbsa/pba_revised_052207.pdf).

ember 2007, provided fiscal year 2008 performance-based performance goals.<sup>6</sup> In compliance with the OFPP guidance, the Department of Homeland Security has issued its own goals.

Occasionally, you may see references to “performance-based contracting” or “performance-based services contracting” or “performance-based services acquisition.” There are differences between these terms. In fact, PBA is not a “contracting” exercise. It requires a broad, integrated acquisition strategy that relies on much more than the active involvement of a contracting officer. As such, today I will use the term “performance-based acquisition” or “PBA” as defined in the Federal Acquisition Regulations (FAR).

The FAR lists three (but actually identifies four) primary characteristics of a PBA. The first required characteristic is for a performance work statement or statement of objectives. A statement of objectives (SOO) is prepared by the government and includes six mandatory minimum elements: (1) Purpose; (2) scope or mission; (3) period and place of performance; (4) background; (5) performance objectives (i.e. required results); and (6) any operating constraints.<sup>7</sup> A performance work statement (PWS)—a statement of work that describes the required results in clear, specific and objective terms with measurable outcomes<sup>8</sup>—may be prepared by the government from the SOO and provided as part of a solicitation or prepared by a contractor as part of their bid responding to an agency’s solicitation that contains only an SOO.<sup>9</sup>

This performance work statement is perhaps the most important element of a PBA and the single greatest predictor of success. The FAR is explicit that agency program officials are responsible for accurately describing the need to be filled, or the problem to be resolved, through a contract in a manner that will ensure full understanding and responsive performance by contractors.<sup>10</sup> The full involvement of senior managers within the agency and the multi-disciplinary team led by the program manager or end-user are essential to the development of the performance statement; without them, the prospect for success drops significantly because there is less chance that the SOO or PWS will accurately reflect the current state and the desired end-state. It is also at this point that the government must be alert to the risk of morphing the PWS into a “design spec” that minimizes the opportunity for bidders to offer innovative approaches to the identified solution—one of the principle reasons for using the performance-based approach.

The second characteristic is having measurable performance standards (i.e. in terms of quality, timeliness, quantity, etc.).<sup>11</sup> These performance standards establish the performance level required by the government for the contractor to meet the contract requirements. The standards must be measurable and structured to permit a fair and accurate assessment of the contractor’s performance.<sup>12</sup> Yet these measures must also be directly tied to the outcomes to be achieved, should be limited in number and scope, and must take into account the cost to the government and the contractor of developing and reporting on any specific measure. But these performance standards should not be rigid and perpetual. At the outset of the procurement, it is possible that both the government and the contractor will not be able to identify the best set of performance indicators to measure the desired outcomes. As time passes and the government’s and the contractor’s experience grows in implementation, there should be a regular reassessment of the measurements used to determine outcome achievement to ensure that the parties are measuring the right thing. This is not meant to, and should not be used to, let either party “off the hook” for poor performance or merely to “re-baseline” a procurement to hide problems.

The third characteristic is the method of assessing contractor performance against the performance standards.<sup>13</sup> The most common method for assessing contractor performance is the requirement for the government to have a quality assurance surveillance plan (QASP). The government may either prepare the QASP or require the contractor to submit a proposed plan for the government’s use with its proposal.<sup>14</sup> Here again, the FAR clearly places important responsibilities on the government to ensure that “sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.”<sup>15</sup>

<sup>6</sup>The memo is available at: [http://www.whitehouse.gov/omb/procurement/pbsa/pba\\_2008\\_memo.pdf](http://www.whitehouse.gov/omb/procurement/pbsa/pba_2008_memo.pdf).

<sup>7</sup>See FAR 37.602(c).

<sup>8</sup>See FAR 2.101; emphasis added.

<sup>9</sup>See FAR 37.602(a).

<sup>10</sup>See FAR 37.102(e).

<sup>11</sup>See FAR 37.601(b)(2).

<sup>12</sup>See FAR 37.603.

<sup>13</sup>See FAR 37.601(b)(2).

<sup>14</sup>See FAR 37.604.

<sup>15</sup>See FAR 37.102(h).

The fourth characteristic is the use of performance incentives where appropriate. In my experience, performance incentives should be used in PBAs as part of a well-thought out business arrangement. When used, these incentives must correspond to the performance standards set forth in the contract.<sup>16</sup> Incentives can be monetary or non-monetary, but they should be “positive” in nature and focused on the outcomes to be achieved. Of course, the contract should include appropriate remedies for the government where the contractor’s performance warrants. But there is an important point to be made here: the contractor can and should be held accountable for the performance under its control. Too often all of the risk is shifted to the contractor and “blame” and penalties are imposed on the contractor for contract funding shortfalls, changed government requirements, or program issues beyond its control. As an example of this risk shifting, in the fiscal year 2008 DHS Appropriations Act, Congress limited the department’s use of award fee contracts unless those contracts are linked to successful acquisition outcomes, specified in terms of cost, schedule, and performance;<sup>17</sup> while we acknowledge the premise that a contractor should not be rewarded for its own non-performance, neither this provision nor its legislative history shows any appreciation for the effect of actions wholly outside the contractor’s control. We are awaiting the implementing guidance for this provision from the department.

In addition to these characteristics, Congress has provided an order of preference of contract types to be used by agencies in achieving its mission needs. They are: (1) a firm-fixed price performance-based contract or task order; (2) a performance-based contract or task order that is not firm-fixed price; and (3) a contract or task order that is not performance-based.<sup>18</sup> Too often, however, the government misreads the provision and explores only firm-fixed price contracts for PBAs. As the committee knows, in a firm-fixed price contract, the contractor generally assumes all of the risk of performance—and it prices that risk and the competitive marketplace accordingly when competing for work. The use of only firm-fixed price contracts could be a short-sighted approach that excludes other appropriately recognized acquisition strategies which might better meet the agency’s need and foster even greater competition among offerors.

Finally, there is the important element of contract administration—to make sure that the program and contract are implemented according to the acquisition strategy. At this stage, it is essential that the oversight community, which has an important role to play in validating performance, does not come in after the fact and audit to an unrelated set of agency regulations and “design” rules inapplicable to the PBA.

#### PBAS ARE NOT NEW

PBAs are not a new technique. One of the earliest government documents addressing them is the 1980 pamphlet issued by the Office of Management and Budget’s Office of Federal Procurement Policy (OFPP) entitled “A Guide for Writing and Administering Performance Statements of Work for Services Contracts.” In April 1991, OFPP issued a superceding policy letter (91–2) on services contracting that also focused on performance-based contracts. While that policy letter has also been rescinded, the FAR has been updated more recently to address the calendar year 2000 congressional direction for the preferred use of the PBAs and other more recent experiences.

#### SEVEN STEPS GUIDE

Early in this decade, six Federal agencies, led by the Commerce Department, in conjunction with the private sector firm Acquisition Solutions, prepared and widely distributed the “Seven Steps to Performance-Based Services Acquisition;”<sup>19</sup> this seven steps guide is a valuable resource for Federal agencies to understand the regulatory requirements and provide practical information on how to prepare for and implement a PBA. But it is just a guide and all of us who work with PBAs recognize that there is no “one size fits all” PBA; it must be tailored to the specific agency needs. In fact, it is not a coincidence that the first five of the seven steps are required to be executed by the government before ever issuing the solicitation. Selecting the contractor is step six! The final step is managing performance after contract award.

<sup>16</sup> See FAR 37.601(a)(3).

<sup>17</sup> See Section 556 of the fiscal year 2008 Department of Homeland Security Appropriations Act, included in Division E of the Consolidated Appropriations Act (Pub. L. 110–161).

<sup>18</sup> See footnote 3 supra; See FAR 37.102(a)(2).

<sup>19</sup> “Seven Steps To Performance-Based Acquisitions,” available at [http://acquisition.gov/comp/seven\\_steps/index.html](http://acquisition.gov/comp/seven_steps/index.html).

## ACQUISITION ADVISORY PANEL RECOMMENDATIONS

As I noted above, the congressionally chartered Acquisition Advisory Panel was tasked, in part, with reviewing performance-based acquisitions.<sup>20</sup> The Panel made several findings and offered ten recommendations for action to improve the usefulness of PBAs.

Of significance, the Panel concluded that agencies remain unsure of when to use PBAs, incentives are not used effectively, and poor data makes it difficult to understand where and how PBAs are used. In fact, the Panel found that many of the awarded contracts listed in the Federal Procurement Data System failed to comply with one or more of the FAR's characteristics of a PBA. When asked to verify the proper coding of contracts, many agencies could not or would not validate this designation. We have seen examples of where agencies have coded contracts as performance-based because of the goals that have been levied on agencies, only to have to subsequently reclassify them after careful post-award analysis.

PSC was pleased to co-chair a multi-association working group that actively participated in the public sessions of the panel; our working group provided testimony before that panel, submitted extensive written material to the panel on examples of successful PBAs, and submitted extensive comments on the interim and final Panel recommendations. Our full comments on the panel's final report on PBAs are included as an attachment to this statement.<sup>21</sup>

## CONCLUSION

At the outset, I suggested that greater information about PBAs might lead the committee to ask a different set of questions and pursue a different set of solutions.

It is not whether PBA, as an acquisition technique, uniquely creates solutions or causes problems. Success or failure is not wholly dependent on the acquisition methodology. The better question to ask is whether a department or agency has the skills and resources to use this PBA technique since there is a greater responsibility put on the acquiring agency to get the "upstream" issues right, including most significantly the statement of objectives, the performance work statement and the measurement techniques.

As to the better answers, this committee is well aware of the management challenges facing the Chief Procurement Officer (CPO) at the Department of Homeland Security and its operating agencies. It starts, but certainly doesn't stop, with attracting and retaining qualified acquisition professionals and ensuring they have the tools and resources to successfully execute the department's mission. They've been hard at it, but the competition among agencies for this skilled workforce is intense, not just in the Washington area but across the country.<sup>22</sup> Contractors are competing for this same talent pool.

The CPO has developed some useful internal oversight techniques, including requiring business cases, conducting investment review board sessions, and creating an Acquisition Program Management Division to provide oversight and support to the department's programs. These are valuable steps that can have a beneficial impact on the department's acquisitions over time, including those major acquisition programs that are already under contract. We salute the department for the strides it has made to date, and stand ready to support them in any way we can.

But more can and should be done.

There needs to be an emphasis on the important role of program management within the department, including their training on necessary critical skills and the use of PBAs. There needs to be an acknowledgement of the impact of the business relationship between the agency and the contractor during the agency's internal formation of the acquisition strategy applicable to any procurement, not just to PBAs. Finally, there needs to be up front coordination with the independent oversight organizations so that their post-award reviews appropriately evaluate the contract.

Mr. Chairman, performance-based acquisitions are a valuable tool that must be available to the agency to bring innovation and experience to fulfilling an agency's mission. But PBAs require a different level of expertise in the agency, the con-

<sup>20</sup> See footnote 1, *supra*, and specifically Chapter 2.

<sup>21</sup> The full text of the Industry Working Group's comments on the Acquisition Advisory Panel's final report is also available at: <http://www.pscouncil.org/pdfs/MAResponseTo1423Panel.pdf>.

<sup>22</sup> For example, in response to the "Gansler" Commission report, the new Army Contracting Command is committed to hiring more than 700 contracting professionals around the country over the next 3 years plus an additional 200 interns in each of the next 3 years. See "Army Contracting Command to hire mid-career employees, interns," *Federal Times*, April 21, 2008, at 4.



tractor, and the oversight community. When done right, the results are impressive. We are committed to finding those solutions to ensuring it is done right.

Thank you for the invitation to provide this testimony. I would be pleased to answer any questions.

APPENDIX 1.—FINAL RESPONSE AND COMMENT OF THE AEROSPACE INDUSTRIES ASSOCIATION, CONTRACT SERVICES ASSOCIATION, GOVERNMENT ELECTRONICS & INFORMATION TECHNOLOGY ASSOCIATION, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA, NATIONAL DEFENSE INDUSTRIAL ASSOCIATION, AND PROFESSIONAL SERVICES COUNCIL TO THE RECOMMENDATIONS OF THE ACQUISITION ADVISORY PANEL

MARCH 7, 2007

MULTI-ASSOCIATION COMMENTS ON THE SECTION 1423 ACQUISITION ADVISORY PANEL'S FINAL PANEL RECOMMENDATIONS

CHAPTER 2—PERFORMANCE-BASED ACQUISITION

Industry has reviewed Chapter 2 of the Acquisition Advisory Panel report on Performance-Based Acquisition and is in agreement with the findings. The Acquisition Advisory Panel has captured points and issues raised by the Multi-Association Working Group in our comments as well as our testimony. The Panel has also captured in the Findings significant failures, challenges, cultural barriers and organizational constructs that inhibit Performance-based Services Acquisition (PBSA) success. Industry supports these findings.

The Panel's recommendations are a start but require much investment and OFPP intervention in order for PBSA to succeed; however, the recommendations address some, but not all, of the findings.

*Finding 1: Despite OMB Target, Agencies Remain Unsure When To Use PBSA*

*Recommendation 1.*—OMB's governmentwide quota of requiring 40 percent of acquisitions be performance-based should be adjusted to reflect individual agency assessments and plans for using PBSA.

*MULTI-ASSOCIATION RESPONSE*

Industry supports this recommendation, agreeing that a one-size-fits-all quota should be abandoned. It is not clear, however, how OMB plans to review each agency's analysis of its unique acquisition portfolio based on clearer OFPP PBSA guidance as reflected in the agency's Acquisition Performance Plan. It is also unclear to what extent plans are tied to transformational versus transactional engagements.

*Recommendation 2.*—FAR Part 7 and 37 should be modified to include two levels of Performance-based Acquisitions: Transformational and Transactional. OFPP should issue more explicit implementation guidance and create a PBSA "Opportunity Assessment" tool to help agencies identify when they should consider using performance-based acquisition vehicles.

*MULTI-ASSOCIATION RESPONSE*

Industry supports the recommendation to create two categories of PBSAs to distinguish transformational from transactional acquisitions. We also support the development of an "Opportunity Assessment" tool for determining when PBSA is appropriate, but are concerned about how the tool will be developed and would caution against the development of a simple check box-type tool. There are too many variables that can determine the appropriateness of a PBSA. For example, while an agency might have a "transformational" requirement, it may not be possible for the agency to baseline their particular measurement and whether the measurement is even realistic and important to the end goals.

Industry is also concerned that the transactional acquisition as described too closely resembles the current PBSA practice of calling an acquisition performance-based and then directing what work is to be done by the contractor. The cost is already constrained by the contract price and quality and timeliness are reflected in the hoped-for past performance evaluation. These are not true performance-based acquisitions. The Panel report states that under this type of PBSA, the government would be "willing to assume the risk that the work being done may not solve the baseline need/problem." But this assumption is contrary to the purpose for PBSA, where the goal is to identify a problem or need and have the contractors determine the best means for finding a solution.

*Finding 2: PBSA Solicitations and Contracts Continue To Focus on Activities and Processes, Rather Than Performance and Results*

*Finding 3: PBSA's Potential for Generating Transformational Solutions to Agency Challenges Remains Largely Untapped*

*Finding 4: Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on "Getting To Award"*

*Finding 5: Post-Award Contract Performance Monitoring and Management Needs To Be Improved*

#### MULTI-ASSOCIATION RESPONSE

Industry believes that Transformational PBSA and OFPP guidance must focus on the Panel's comment to Finding 3: "The Panel concedes that defining a strategic vision and compelling an institution to coalesce around it are extremely difficult endeavors. Stove-piped organizations and institutional and cultural conservatism greatly inhibit the ability to define and execute against strategic objectives. The right people must be involved, including senior leadership and vital stakeholders, to bring a broad perspective on what to buy, as well as which vehicle to use. If the critical parties are not at the table, it is extremely difficult to break through cultural barriers that inhibit success."

We also note the Panel's concern for the tendency of contractors to "not to be open to a broader set of responses outside the government's original SOW." The reason for this "tendency" is because contractors are fearful of losing a bid if they do not closely mimic the government's statement of work in their responses. As a result, many competitions are reduced to careful alignment of proposals with the government's specific approach and/or price shoot-outs, and the potential for innovation is largely forfeited. Industry does not see any recommendation or required direction to OFPP to insure that these concerns are addressed.

*Recommendation 3.*—Publish a best practices guide on development of measurable performance standards for contracts.

#### MULTI-ASSOCIATION RESPONSE

Industry generally supports the recommendation for OFPP to issue a Best Practices Measurements Guide but such a recommendation requires more clarification.

The references to a "Measurement Chain" and "Logic Model" frameworks are unclear. The discussion in the last paragraph on Baseline & Outcome Measurement is also unclear. Baselines are essential for any successful PBSA and must always be a measurement that can be well articulated in a final contract. Further, the Panel recommends under Limiting Measures setting a limitation on the scope of performance measures in PBSA's, which seems to be reasonable. However, the recommendation never defines what measures are acceptable and which ones are not necessary. It simply says that measures should be limited to a "sampling."

Finally, the evolution of measures is a topic emphasized in the recommendations as "WILL and MUST" changes over time. This is a significant topic that requires focused understanding and sophistication. Expectations must be realistic and not set to arbitrary hurdles.

*Recommendation 4.*—Modify FAR Part 7 and 37 to include an identification of the government's need/requirements by defining a "baseline performance case" in the PWS or SOO. OFPP should issue guidance as to the content of Baseline Performance Cases.

#### MULTI-ASSOCIATION RESPONSE

Industry supports the creation of a Baseline Performance Case. However, establishing the baseline performance state and state-of-practice assessments will require in-depth training as well as overcoming a cultural hurdle in that understaffed contracting activities will seek the "easiest" way to answer the Baseline Performance Case requirements. Unless done diligently, the resulting Baseline Performance Case will not solve the underlying problem of clearly defining needs and requirements upfront.

*Recommendation 5.*—Improve post-award contract performance monitoring and management, including methods for continuous improvement through the creation and communication of a "Performance Improvement Plan" that would be appropriately tailored to the specific acquisition.

#### MULTI-ASSOCIATION RESPONSE

Performance Improvement Plans as described are found in industry practices and industry would support the development of these plans in the course of post-award management of PBSA contracts. Such plans allow the contractor to provide evolving

input as to how they should be assessed for performance, while allowing the objectives of the contract to evolve with changing needs. However, OFPP needs to provide crisp guidance as to when and how performance improvement plans are used and advise how such plans provide a diminishing return in multi-year contracts. This recommendation requires focused understanding and sophistication that may not be present in current usage of PBSAs.

*Recommendation 6.*—OFPP should provide improved guidance on types of incentives appropriate for various contract vehicles.

*MULTI-ASSOCIATION RESPONSE*

Industry supports this recommendation for OFPP to take the lead by using the PBSA interagency working group to catalogue the various types of incentives appropriate for use in PBSA efforts, critique how the incentives are being applied, assess the applicability of award fee and award term approaches to PBSA and discuss the challenges posed in managing PBSA's under existing budget and appropriation rules that limit multi-year financial commitments and incentive-based budget projections. In addition, in order to maximize the use of PBSA's to their fullest, industry recommends a legislative solution to these budgeting problems.

*Recommendation 7.*—OFPP should revise the 7-step process to reflect the Panel's new PBSA recommendations.

*MULTI-ASSOCIATION RESPONSE*

Industry agrees with this recommendation to revise the 7-step process subject to these comments.

*Recommendation 8.*—Contracting Officer Technical Representatives (COTR's) in PBSA's should receive additional training and be re-designated as Contracting Officer Performance Representatives (COPR's).

*MULTI-ASSOCIATION RESPONSE*

Industry strongly agrees with Recommendation 8, but questions how OFPP plans to address the comment in Finding 3 regarding cultural change to enable transformational PBSAs. While training and designating a COPR will facilitate better transactional PBSAs, additional training and oversight does not address fundamental organizational and cultural barriers of a transformational PBSA.

*Finding 6: Available Data Suggests That Contract Incentives Are Still Not Aligned To Maximize Performance and Continuous Improvement*

*MULTI-ASSOCIATION RESPONSE*

This finding is more closely related to Recommendations 5 and 6 regarding continuous improvement and guidance on incentives.

*Finding 7: The FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA*

*Recommendation 9.*—Improved data on PBSA usage and enhanced oversight by OFPP on proper PBSA implementation using an "Acquisition Performance Assessment Rating Tool" or A-PART.

*MULTI-ASSOCIATION RESPONSE*

Requiring agencies to use the A-PART tool with an enhanced checklist will not be a panacea of successes. Transactional/Transformational PBSA contracts require understanding and sophistication and a checklist will only provide OFPP with data that shows agencies in fact followed a process.

Industry supports the recommendation that FPDS be amended to better capture data regarding PBSAs and to adequately differentiate between transformational and transactional performance-based acquisitions and their task and delivery orders.

*Recommendation 10.*—OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques 5 years from the Panel's delivery of its final report.

*MULTI-ASSOCIATION RESPONSE*

Industry supports the recommendation for a study on PBSA but analyses must be more regularly done to provide value to policymakers.

Chairman THOMPSON. Thank you.

As you see, my colleagues have already departed to make the vote. We have five votes. I anticipate about 11:15 a.m. we will be ready to convene, subject to the order of the floor. We will recess the hearing until that time, 11:15 a.m.

[Recess.]

Chairman THOMPSON. We will call the recess meeting back to order. We have some other members who will be coming shortly.

Let me thank the witnesses for their absolute cooperation in this endeavor. We thought it would be five votes, and it ended up being 10 votes. It is now raining outside, so people who had bright ideas of coming above ground had to go back and try to come under.

As you know, this is to Mr. Essig, I will start the questioning off since we have completed the testimony. In your testimony, you stated that it is essential that the department pursue performance-based acquisition in a judicious manner. Given the outcome of some of our performance-based acquisitions, such as SBINet's Project 28, ACE, and Deepwater, what plans are being made to ensure that the department is more selective in choosing to use an outcome-oriented acquisition strategy?

Mr. ESSIG. As I mentioned in my opening comments, one of the characteristics that is absolutely essential for successful PBA is to be able to accurately articulate what the requirement is to all personnel involved, to translate those initial user needs into contracting language that can be measured and enforced.

We have a number of initiatives underway within the department to improve our performance in that area. Let me talk just for a moment about what we are doing for our investment review process. Over the past 6 to 12 months, we have been engaged in a review of our level I programs. Those are the highest dollar-value programs in the department.

We are continuing that review, but along the way we have identified a number of systemic or process issues for the way we basically manage and approve our programs in the department. One of the systemic issues we identified was that today we have no departmental requirements process. As a result, we have had historically some major problems on the program formulation side.

So even though, as I mentioned in my opening comments, clear measurable performance measures are required for successful PBAs, it is not something we have done historically in the department. We found, for example, that about 50 percent of our level I programs do not today have what we call acquisition program baselines.

What those documents are, basically, they articulate the performance that is required from the program, the timeframe we expect that will be able to deliver that capability, and how much it will cost. These are essential tools for us to be able to understand what our requirement is and make a decision basically as to whether or not we should pursue programs.

So what are we doing about this? Well, we are in the process of re-engineering the department's processes for requirements determination and for investment and acquisition program decisions. Now, my office is leading the re-engineering for the acquisition program decisions. We are doing that, again, for a couple of reasons. One, we recognize that this department represents the merger of 22 different agencies, and that the programs we have today were approved under whatever processes were in place in those predecessor organizations.

We want to put a process in place for DHS that applies to all of our programs, that ensures that we have the basic discipline in the process to ensure that before we go to contract, we identify exactly what the user requirement is, that we have taken the up-front time that is required to translate that user requirement into system performance specifications and into contract language.

We are also in the process, for example, of making sure we understand how the users do their business today. We refer to that as a concept of operations. Before we deliver a capability to our border patrol agents, for example, we want to make sure we understand how the Border Patrol does its job today.

All of that is critical to basically spending the time up-front before we make decisions on which programs to pursue, which programs to fund, that we understand again the capability that will be delivered, the timeframe that is required to develop the capability, and the amount of money that will be required. That will serve as the basis for making program decisions as to which we decide to pursue and which we do not.

Chairman THOMPSON. So now you are saying that right now you are 50 percent there with this process? Or where are we?

Mr. ESSIG. We have two companion documents we are looking at. One covers the program execution phase, which is where we are talking about the investment review process. It replaces the current directive we have on capital investment decisions. That one is in the process. We are going to implement that in two phases. The first phase will be the program outline. It will identify what the decision process is and who the decision authorities are.

The second portion of that, the second phase will be specific guidance for major categories of DHS spend. We will have capital investments in one category. We will have services acquisition in another category. We will have, for example, off-the-shelf expendable commodities in a third category.

The reason for that is that we understand that while each of those are significant spend categories, and each of those requires a headquarters-level look, the amount of the detail in the look whether or not it involves research and development effort or is simply providing off-the-shelf commodities, means that the decision process will be different.

Chairman THOMPSON. I appreciate that. I want to get a couple of questions to a couple of other people.

Is it your testimony that you presently have the capability in-house to do everything you are proposing?

Mr. ESSIG. Yes, sir.

Chairman THOMPSON. So you need—

Mr. ESSIG. Let me clarify, if I could: In-house as supplemented by agreements we have with the Defense Acquisition University and our FFRDCs who provide subject-matter expertise.

Chairman THOMPSON. Okay.

Now, Mr. Hutton, did you look at the capacity of DHS to perform these procurements that we are talking about at this point, in the review?

Mr. HUTTON. Mr. Chairman, what Mr. Essig has outlined is very critical to gaining improved outcomes at the DHS. We have some ongoing work right now where we are looking at that investment

review process—where have they been, where are they now, and where are they headed, and what is the level of resources they will need to get there.

I think that this is a very critical piece that is going to help enforce better outcomes. But the key here, sir, is that when we have looked at service acquisitions more generally across government, there are a couple ways of looking at it. One, we encourage that the agencies take a strategic approach, looking at it from a strategic level, and looking at it from a transactional level.

At the strategic level, we are arguing that you need sustained leadership and you need sound processes with discipline, and ensuring that these processes are adhered to, and that you need good information to be sure that you are getting good outcomes. So right now, we are looking at some of the activities that Mr. Essig is describing to you.

I must emphasize that these are very critical and some of these assessments have been going on and this consideration of changing their investment review process has been underway for a few years now. There is much more activity and action going on right now to help improve that process, but we hope when we issue a report later this year we will have more insights on what is their ability to do that.

Chairman THOMPSON. So is it your belief right now that internally there is enough capacity at the department to get us where we need to be?

Mr. HUTTON. I think, sir, that when you look at it from an individual project level, we do point out that they are still trying to fill key positions to help them gain good outcomes, whether it be on the programmatic side, certain types of specialties, as well as on the contracting side. I think they have a workforce plan underway which is another area that we are actually focusing on as well in another study, and looking at their ability to plan and fill their acquisition workforce needs. So I would say right now, sir, that there are still some positions that they are looking to fill.

Chairman THOMPSON. Let me try to play out for everybody to have a chance to answer. When we look at the type of procurements we are talking about and start asking questions, generally it comes back to the committee for various reasons that because of the manner in which it went out, the oversight and the measurement that would normally be there we didn't have.

Project 28—I will just put it out as an example. That procurement became very controversial because we really couldn't get an explanation of the procurement to the committee that was satisfactory. So every time we had a hearing that talked about it, it appeared to be a moving target. So that the initial procurement from the beginning did not actually reflect the end-product, so the expectations that were put out at first were not.

So it happened that we have a lot of contractors coming back to the committee saying, you know, if they had put that out first in the procurement, we could have bid. We could have done a number of things, but because the procurement was structured one way and modified along the way, we didn't have the capacity, one, to compete, but had we known it was going to be changed—and I guess, Mr. Chvotkin, some of the people who came to us were mem-

bers of your organization who said that, we work for the government all the time, but these kinds of performance-based acquisitions sometimes lead us not to compete because there is not enough for us to really put the pencil to, and we are not willing to take the risk.

Mr. CHVOTKIN. Yes, Mr. Chairman. I think you have put your finger exactly on the heart of the issue. As I pointed out in my statement, these are among the most difficult types of contracts for an agency to write and among the most difficult for a contractor to compete for and then execute.

While I don't know as much about the SBINet program as this committee does and wouldn't propose to comment on it, it was a proof-of-concept. The agency sought various technical solutions and actually had robust competition at the front-end around it. Now, there were questions about the scope of the requirements and whether that was clear.

So I think the unanimity you see among the panel today may be unique in the testimony that normally comes before this committee, is around the philosophy around performance-based contracts. But let me point out that the alternative is a design. The alternative is that the Department of Homeland Security itself establish the requirements and then compete against a fixed set of requirements. That often either minimizes the flexibility or the innovation in the procurement.

That is why my opening line in the testimony, and my last comment on this one is that it is not the technique. It is the ability of the agency to define its requirements in a comprehensive and understandable way that fosters the best opportunity for competition.

Chairman THOMPSON. Mr. Hutton.

Mr. HUTTON. I would just add to that that I think Mr. Essig made the point very succinctly in his statement, when you think about requirements, it is from the aspect of what the contract says and what the user needs, and how well you define and articulate those requirements. I know in a couple of the cases that we looked at, when they were at the point of defining their requirements and they looked at the sufficient number of people that they needed at that time to help execute a program with good outcomes, they were down to the 10 percent level in terms of people available to help get that acquisition off to a good start.

So requirements are just super, super important. It has been reinforced across all four here, but it is also to make sure that you have the program people connected, the contracting people connected, and the extent to which and where you are in the phase that the contractors are on board.

Chairman THOMPSON. I want to thank you.

Ms. Reed, given your experience in this area, when would you think it would be wise for the Federal Government to use contracts like this? Or do you think it is wise? If so, why?

Ms. REED. I do believe that performance-based acquisition offers some real opportunity for government to get innovative solutions. What we have seen is that some folks in government are very used to a specification-based approach. They have trained many of us in the industry to expect that, and it is easy to respond back to the

section C and say, this is what you want; this is what I will deliver. It is easy to price that.

But it does require and really offer an opportunity to industry who have had experience with delivering solutions in other agencies, other governments, to be able to share that kind of knowledge and experience with each individual procurement, and the process that is used for performance-based acquisition enables that kind of communication so that you can create an objective and find a solution that offers a better outcome for the American public.

Chairman THOMPSON. Thank you.

I will yield now to the gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Essig, I believe that performance-based contracting offers a number of benefits in specific situations. It is clear that the mandatory cap for performance-based contracting forced upon each Federal department is yet another effort by this administration to guarantee more work for private contractors, with contracts that contain few specifics and suffer from lax oversight.

I think that this is, Mr. Chairman, a larger pattern of behavior that we have seen. This administration believes that many private contractors should be given a free hand and be trusted implicitly not to choose their own profit margin over providing quality and cost-efficient products and services paid for by the American taxpayer, and we are talking about protecting the American public on the homeland.

This pattern has been demonstrated time and time again. The relative failure of Project 28 to work as advertised on the U.S.-Mexican border, which I understand, Mr. Chairman, has been shut down. Is that correct?

Chairman THOMPSON. The only thing I can say is that the press reports it, but we have not been told officially.

Mr. PASCRELL. I am sure the secretary will tell the press before he tells us, but that is his prerogative. We are irrelevant.

But anyway, there are various military contracts that have been given to KBR in Iraq where it has been proven to be rife with inconsistencies and worse. That is not the subject of my question to you. It is the job of the inspector general's office, the OIG, to fight waste, fraud and abuse, as far as I know, and the GAO's report—thank God for the GAO, I pray every weekend for the GAO—that you survive.

The GAO report on performance-based contracting shows that this is clearly in many instances not occurring in DHS, which can only be the case if the OIG's office at DHS has either not been given the necessary resources. You do refer in the GAO report to staffing deficiencies—very clear, very specific—so that they can investigate. If you don't have enough people and if you don't have them properly trained, you are not going to investigate, period. Or its findings are being ignored—that is another possibility—or undermined.

So Mr. Essig, as the chief procurement officer for the department, will you answer the question of why the OIG has not been able to control waste, fraud and abuse that often seems to be rampant in the department's contracting practices. Could you answer that question please, sir?



Mr. ESSIG. Yes, sir. You actually had several points in that question. The first one concerns the impact of the Federal-wide goals for performance-based acquisition. This year, I believe those goals were increased to 50 percent, but OFPP gave individual departments and agencies the opportunity—

Mr. PASCRELL. Who is OFPP?

Mr. ESSIG. I am sorry—the Office of Federal Procurement Policy.

Mr. PASCRELL. Thank you. I just wanted to make sure in my own mind. We hear these letters every day, you know.

Mr. ESSIG. They gave each individual agency the opportunity to use different goals for their department based on where that department was in maturity level and past performance capability. As I mentioned in my—

Mr. PASCRELL. Where is the department in maturity level, DHS?

Mr. ESSIG. Two things, I think it was a year or 2 ago, we established goals for DHS which did in fact differ from the top-level goals given to us by the Office of Federal Procurement Policy.

Mr. PASCRELL. Did you know that, Mr. Chairman?

Chairman THOMPSON. No, sir.

Mr. PASCRELL. Okay. Thank you.

Mr. ESSIG. Quantitative goals. We are taking a look at those. I believe we established goals for ourself for this year at 25 percent of our actions, rather than the 50 percent that is recommended. In actual performance, however, I would say we have fallen short of that 25 percent goal. Now, that in and of itself is not a major concern to me until at least I have an opportunity to understand why that is the case.

One thing, for example, is we recognize, and I think GAO has recognized, that the data in the Federal procurement data system which identifies the percentages that we are meeting is not an accurate database. So one of the things we are doing is we are conducting my review, my contract operations group as part of its periodic procurement management review, is we are looking to make sure that contracts that are coded as performance-based did in fact have the essential elements for good, effective PBAs.

Mr. PASCRELL. So Mr. Essig, you admit before the committee today that in order to do what needs to be done to make your job a lot easier, we need reliable data. Okay? Do you agree with that?

Mr. ESSIG. I agree with that.

Mr. PASCRELL. You agree with that. And that right now, the data in the system is, in many cases, inaccurate. Do you agree with that?

Mr. ESSIG. I think we have made tremendous progress in the last year. We recently at individual component levels went through to validate the accuracy of the data in our 2007 database. I believe we have cleaned that up. I think it is in much better shape than it has ever been. I would say while of course there will still be some inaccuracies, I think they are nothing close to what they were years ago.

Mr. PASCRELL. Why do you think, looking back, there was not a more reliable database? I mean, that is pretty basic. You can't move. You can't go out to bid. You can't contract unless you know what you need, and what you need is dependent upon a look at

your database. It is pretty basic. I don't think there is any rocket science involved here. Why wasn't that done?

Mr. ESSIG. A couple of things. One, first off, what we have been talking about on the database was whether or not we were meeting the quantitative goals for performance-based acquisitions. That question alone does not mean we are not able to do a good job of executing effective PBAs on a case-by-case basis. So whether or not the database reflects accurate quantities of PBAs really doesn't prevent us from doing a better job on putting them in place in the first place.

Mr. PASCRELL. But if you start out with faulty data, if you start out with data that is unreliable, you can have the greatest process in the world and totally logical, you would not come out with the truth. How can you do that? I would like to know how you do that.

Mr. ESSIG. From a performance-based requirement, as a matter of fact there is a guidebook on OFPP's website on performance-based acquisition. There is a seven-step process which is identified in a lot of detail as to the proper way of putting together a PBA. If those steps were followed, the success rate should be high regardless of whether or not the historical database for contract awards accurately reflected how many PBAs we had.

Mr. PASCRELL. Do you take any exception to any of the recommendations that have been made by the GAO office?

Mr. ESSIG. In this audit report?

Mr. PASCRELL. Yes.

Mr. ESSIG. No.

Mr. PASCRELL. You accept their recommendations?

Mr. ESSIG. Yes, sir.

Mr. PASCRELL. So my next question would be, how long do you think, since you are doing some of it already, but how long until we get to the point where these recommendations are implemented, rather than simply perfunctory? How long will it take?

Mr. ESSIG. The key is making sure that the workforce is fully trained and knowledgeable about what the requirement is.

Mr. PASCRELL. When is that going to be done?

Mr. ESSIG. We have actually been doing that to date. As I mentioned in my opening comments, we recently completed what we call an excellence in contracting series, the training opportunities for the acquisition workforce. We have conducted over the past year two training sessions in PBA, the most recent one being jointly provided both by OFPP and GSA as to the proper ways of doing PBAs.

We are in my contracting oversight group, again as part of our procurement review processes, taking a sampling of contracts that have been coded as PBAs to see whether or not they were done correctly.

Mr. PASCRELL. Well, that leads me to my final question, and thank you for your patience, Mr. Chairman. You can now understand, and I think I can be so bold to speak for both sides on this issue. Mr. King will correct me if I am out of line here. We are so concerned about this transition period, where we are moving from one administration to whatever administration, that we have some good solid data as to what needs to be done.

It is very uncomfortable. It makes me very anxious on such a critical area as homeland security. We all pound our chests about

it and want to protect America and our families and our streets. When we see these things happening, we know that there is a breakdown in the system, or there never was a system in the first place.

We are very anxious about handing over to the next administration, your department handing over to the next administration. We haven't even been supplied with where we are at on this committee, unless there is breaking news. We have not. We have no breaking news. It is May. I am not comfortable about that and I am sure you are not either.

Mr. ESSIG. Actually, I have a very specific task given to me to accomplish this year before the change in administration.

Mr. PASCRELL. Tell us about it.

Mr. ESSIG. It is to have that revised, that re-engineered investment review process in place and up and running in the department. Now, over the course of the past year, we have identified again the systemic weaknesses of the current processes and procedures in the department. We know what we need to fix. We know how to fix it. We are in the process of doing that.

In February of this year, the deputy under secretary for management issued a memorandum, the first of a series of memorandums, which will identify and roll out the new investment review process for the department. What it did was identify the critical need for acquisition program baselines. Again, these are the documents which identify the capabilities, the costs, and the schedule required for individual programs. It effectively becomes the contract between the program manager and the department for that program.

We have identified that a significant portion of our programs do not have those to date, and that needs to be remedied. My office is actively working with individual programs, one after the other. We are working through those to establish the program that do not have APBs to establish them. That will be done this year.

I issued a subsequent or companion memo that is the second portion of our roll-out of the revised process in March of this year. What it did was identify for the components that we had completed our review of what we called the quick-look assessments. We had identified a number of systemic issues, and we recognized that a number of the programs did really not have clear guidance and direction from the department as to whether or not their program was authorized to proceed and, if so, what milestones it needed to complete and dates for completion it had to accomplish if it was going to be allowed to continue in the future. That will result in documentation called the acquisition decision memorandum for every level I program at DHS. That will also be completed this year.

Mr. PASCRELL. Now, you provided this to the secretary, this new information that you are gathering, the new standards that you are gathering, this new baseline that you are establishing?

Mr. ESSIG. We have briefed the deputy secretary on this. He is aware of what we are doing. We have basically the memos I mentioned from the deputy under secretary and myself that were issued to all component heads.

Mr. PASCRELL. Mr. Chairman, can I follow this up with one question to Ms. Reed?

Chairman THOMPSON. Yes.

Mr. PASCRELL. If you will allow me to do that.

Ms. Reed, the culture—let me be so kind as to call it a culture—of the procurement workforce may involve viewing the award as the final step in the process. In performance-based contracts, though as you well know, better than me, the award is an intermediate step, isn't it, Ms. Reed? What are your thoughts on how do we change that culture? I think that this is essential, Mr. Chairman, to what we are trying to get at here in terms of transparency, contracts that make sense, and buying what we need.

Ms. Reed.

Ms. REED. I think one of the ways in which you address that is recognizing—and this is one of the real values I see to the performance-based acquisition process—is it recognizes that an acquisition isn't solely the responsibility of a contracting officer. It is the responsibility of the program manager. There is a community of people and a community of interests that need to be addressed with these acquisitions. This process requires that community of people to come together early on and together determine what the outcomes are going to be.

That I think is one of the key parts of this cultural shift. It is no longer being a lone ranger, and now working more in tandem across the department and across the interests to address the need.

Mr. PASCRELL. Thank you.

Thank you, Mr. Essig, for your service to your country.

Mr. ESSIG. If I could just add one thing to that. Earlier this year, I identified my top three priorities for the department. I sent that to all of the heads of contracting activities at DHS, as well as all of the component heads. I identified three priorities. Priority No. 1 was quality contracting. I clearly identified that I was talking about the life-cycle of the contract, not just to award, but over the administration close-out of that contract action.

Priority No. 2 was quality acquisition management. It brings in all of the things that Ms. Reed was just speaking out—the members of the team, the program managers, the systems engineers, our life-cycle cost estimators. Okay? That group.

Priority No. 3 is quality people. It is building the capability in our acquisition workforce to know how to do this job, how to do it effectively, to make sure that we have centralized training, that we understand what capabilities and what certification requirements each function in this area has to have. So I think we are doing that.

Chairman THOMPSON. Thank you very much, Mr. Pascrell.

There are a couple of things I want to get to.

Mr. Essig, you referenced some memos that you have prepared. We would like for you to provide those memos to the committee.

Mr. ESSIG. Certainly, I would be happy to.

Chairman THOMPSON. The other question is more a structural question. As the chief procurement officer for DHS, do you have line authority as to the different departments under DHS—Customs and Border Protection, Coast Guard, Immigration and Customs Enforcement, Transportation Security Administration—to those various procurement entities?

Mr. ESSIG. You have probably heard the term “dual accountability” that we have at DHS. One of the things you will see on an organization chart is the operational reporting chain for heads with contracting activity. Unfortunately, what you don’t see on that chart is the other side of line authority, and that is the flow of contracting authority within the department.

I recently had to brief some people and I put a second line. There were some green arrows that I had which I identified clearly what the line authority was for contracting actions in the department. It goes from the secretary and deputy secretary to the under secretary for management. From there, it goes to me as the chief procurement officer. That authority then is delegated by me in writing to the heads of the contracting activity who can then flow that down to the specific contracting officers.

So even though those heads with contracting activity on the organizational chart at line reports within their component, the contracting line authority flows directly through me to them. So in answer to your question, sir, I believe I have all the authority I need to properly enforce procurement actions within the department.

Chairman THOMPSON. We will come back to that, but I want to ask Mr. Hutton if in fact his review produced that same line of authority within the other departments.

Mr. HUTTON. If I may just make sure I understand the question. Were you asking if Mr. Essig—

Chairman THOMPSON. Well, there is a question as to whether or not the chief procurement officer has enough authority to run the operation. To be quite honest, I don’t think he has it. I want to give it to him. I know he is an appointee. He can’t run under the bus willingly, but I am just trying to help us structure the organization so that if there is somebody in Customs and Border Protection that is not following the directives, he can stop them. But it has to be based on some authority vested in him as the chief procurement officer.

We ran into this same issue in personnel, that departments have their own people, and so the people in DHS don’t have anything to do with it. But we have a management operation in DHS and we have five or six personnel systems. So if we have a Department of Homeland Security, then that department should flow down to every entity below it. That is where I am going.

Mr. HUTTON. Thank you. You may know that GAO has been talking about the dual accountability, as Mr. Essig described, for several years because we had some questions about the fact that whether some components under the management directive were directly under some of their acquisition processes in the department, like Secret Service and I believe Coast Guard.

We also had questions about that authority, and if for example the chief procurement officer saw some serious problems in one of the components, would they have the authority to go in there and say fix it? Or would the chief procurement officer, if they wanted to help influence the acquisition workforce in that component agency, would they have the authority to do so?

About not quite a year ago, in another setting in a hearing, we learned that the DHS considered the under secretary for management to be the chief acquisition officer. That was something a little

new for us to hear that. We also heard that the components that I described earlier would be brought under the management directives.

Mr. Essig is probably in a better place to tell you what the current status of that is, because we do follow up on that issue to see if in fact these have been formalized because I think it has to be formalized to be effective. We talk about transition issues. You can't work on personalities for a long period of time. You have to have disciplined formal processes.

So what he described is my current understanding, but as I mentioned earlier, as we look this, we have some ongoing work right now. We are looking at the investment review process, for example, and the workforce process. These are issues that we are constantly trying to keep up-to-date on because it all comes to if there is a problem, the proof in the pudding is, can the change be made? Or do you have to go way high up into the organization?

Chairman THOMPSON. That is the concern that we have. We ran into it with Deepwater. We saw some contracting issues from a procurement standpoint with Deepwater, but we couldn't stop it because of the procurement peculiarities that existed at the time. Our effort is to try to streamline that so if there are things going wrong, we want to be able to stop it.

Mr. PASCRELL. Mr. Chairman.

Chairman THOMPSON. Yes, the gentleman from New Jersey.

Mr. PASCRELL. What if we were to ask, and have already asked, for a GAO review of transitional abilities? That should be going on in every department. In Homeland Security, we have had a difficult time getting information about this. I think that is true. Correct?

Chairman THOMPSON. That is correct.

Mr. PASCRELL. I think, not to try to give you more work, which you have a lot of, but I would like to see an overview of not only procurement, but the entire process of what is going on in Homeland Security and the transition, since this is such a critical area for us, to see where we are so that the next administration and the next Congress can move accordingly. Is that in order to ask for something to that degree? I think it is important. I think it would answer a lot of the questions that we have here today.

Chairman THOMPSON. Absolutely. Under Secretary Snyder promised in another hearing to provide us with all that information. It is my understanding that if we don't get it within the expected time, that we can proceed.

Mr. PASCRELL. But the GAO is overseeing this and giving us what is really happening. We didn't get a lot of the reports we were supposed to get. We got a lot of reports that were late, and we got reports that were not accurate. I think the GAO can help us along those lines.

Chairman THOMPSON. I think we can make the request. I am not sure from a timeliness standpoint we can get anything back.

Mr. Hutton, do you want to comment?

Mr. HUTTON. Mr. Chairman, I just want to say that as we have done in the past in GAO, we do think about transition issues. I know that with DHS in particular, we issued a very large report last year which was like a report card on where DHS is 5 years later. We do think about these transition issues. If what we have

done in the past continues, we will be addressing transition issues to help support the Congress in any way that we can on what we see are the issues.

Chairman THOMPSON. We will follow up with a request for that.

Let me refer you to this whole issue of coding in our database. According to your report, you looked at 138 contracts, and 51 percent of those contracts had zero information relative to a performance work statement, measurable performance standards, and a method of assessing contractor performance against performance standards.

Now, Mr. Essig, that is a serious dilemma, I think, for the department, if in just a random selection of contracts 51 percent of them come up with none of the basic tenets of performance-based contracting or procurement requirements. This totaled some \$347 million in contracts.

Now, you have said to the committee that you have put in place certain things that would not allow contracts like that to go forward. Can you tell the committee with some degree of certainty that no contracts relative to performance-based contracts will go out without all the required elements in place before?

Mr. ESSIG. Specifically to the question of can I say that no contracts will go out with all the elements, no sir, that would not be possible for me to be able to certify that there will be no errors made by any member of the DHS acquisition workforce.

Chairman THOMPSON. I really don't mean to cut you off, but we should have enough checks and balances built into the system.

Mr. Hutton, could you help the committee understand how we could push a contract out without assurances that it meets some standards?

Mr. HUTTON. Well, if I can link back to the question about the data reliability. What that data suggests to me is does that mean that the intent was to do performance-based and they just didn't do it well? Or does it just mean that the procurements were coded improperly in the system?

I think when we talked about targets earlier, if the targets are being used to drive some response for a performance metric and it really doesn't emphasize the importance of the quality of that acquisition, then I would think that is an issue, if agencies are looking at that target and are maybe trying to use performance-based when it may not be the best situation for that particular situation. Or it just may be a matter of just coding, so meeting a particular performance level.

I guess targets are nice when they help to incentivize and drive people towards a desired outcome, but you can't lose sight of just saying, yes, we ticked it off; this is a performance-based or not. I think the better approach at an agency level is to look at are we applying this approach in the best manner, doing the right thing, having good requirements, having good performance standards, having good surveillance. Looking at the nature of the outcomes we are getting—are these quality outcomes? That is where the focus really should be.

Chairman THOMPSON. Well, if in fact you reviewed the contracts and you found that 51 percent of them had none of those things, how do we fix it?

Mr. HUTTON. Okay. Well, let me mention first that the congressionally mandated Acquisition Advisory Panel issued a report with about 90 recommendations back in January, I believe. GAO commented on that report. One of the chapters dealt with the data across government. What the Acquisition Advisory Panel found, among other things, is that it is inaccurate and incomplete. It is not just a DHS issue with the FPDS data. It is not reliable for analysis. The processes for capturing and reporting on this data need to be improved.

So I believe there were a dozen, maybe 15 recommendations that the Acquisition Advisory Panel made. I believe for this particular issue, they were mostly made to the OMB Office of Federal Procurement Policy to take steps to get at some of these root causes of what we are talking about.

Chairman THOMPSON. Well, I guess the elementary concern for me is that we are putting procurements out in the marketplace. If the data or the coding is improper, how are we able to measure the product coming back? How does a company do what is expected when it may or may not be a proper procurement?

I guess, Ms. Reed and Mr. Chvotkin, I guess I need some help with this just from my perspective. If we know that a lot of what is coming out may or may not be accurate, how can your members adequately compete in the marketplace?

Mr. CHVOTKIN. Mr. Chairman, I think there are two related issues. The first, as to the coding, one mechanism that comes to my mind is that Mr. Essig talked about the Investment Review Board and the quick review that they are doing of procurements. Today, the coding is done by the contracting officer without other review. So if there is an Investment Review Board around an activity, it is at that point that the decision should be made to code that it is performance-based or not.

So just changing the level, not to suggest that every procurement needs to come up to the Investment Review Board, but if the IRB is in fact reviewing a procurement and validating that the three or four key components are being met, that is the right time to code it or not, as the case may be.

The question of competition is a different one. It really goes to, again, coming back to the quality of the original requirements and the degree of clarity around the agency's needs, both from a contractual standpoint and from an end-user requirement. That is not a coding issue. That is a transparency issue, if you will. That is a communications issue on the department's part, and any department, not just the Department of Homeland Security.

That is a more difficult challenge to make, but I think here again there are opportunities through industry days, through broad communications, through draft solicitations that can help enormously in getting that information out to the bidding community.

Chairman THOMPSON. Thank you.

Ms. Reed, would you like to respond?

Ms. REED. I think I would very much agree with Mr. Chvotkin on this. There is a need for the acquisition community to understand how they can best reach out to industry and engage in that communication. One of the things that we have become concerned about is that there seems to be more focus around the notion of in-



appropriate communication. There are forums, and this is again one of the reasons why we like the performance-based process, that it emphasizes—and I talked earlier about communication within the government. It is equally important to be able to communicate openly with transparency to industry.

I would submit that this is important whether or not it is a performance-based acquisition. It is what is necessary for good acquisition no matter what type you are using. It is my belief that the process that is in place to support performance-based acquisition gives you a better shot at the kind of open communication that is necessary for industry to be able to understand what the requirement is and then bid competitively and appropriately on it.

Mr. ESSIG. Mr. Chairman. If I could add something on performance-based?

Chairman THOMPSON. Yes, sir.

Mr. ESSIG. Specifically on coding? The first point I would like to make is that problems with the Federal procurement data system is a Federal-wide issue that is currently being worked by the Office of Federal Procurement Policy. DHS has been an active participant in trying to improve the quality of the data in that system, but this is a Federal-wide issue.

Second, regarding the numbers that you mentioned in the opening comment which said 50 percent were inaccurate, that was for one single element of the Federal procurement data system report. That is whether or not the contract was coded as performance-based or not.

I would argue first-off, when the requirement to identify as performance-based first came out, we had a contracting workforce that was striving to implement the new initiative to get the full advantage of performance-based. A couple of other things in that data tells me that the other 50 percent of those people were fully successful in implementing performance-based acquisitions—acquisitions that met all of the requirements to deliver some of the benefits that were identified in the GAO report.

It is not to say that the remaining 50 percent included none of the aspects of performance-based. In some cases, I would say they included some of the requirements. They may have had a performance statement of work, but may not have had measurable data to assess how well they did. In other cases, we had simply a case of a coding error.

But the key is that I think we have made very significant improvements in our use of performance-based acquisitions over the past several years. We are doing it better today and we are doing more of it than we ever have in the past. I think that is some good news in the data. Not to say that we don't have some inaccuracies.

The third point I want to make is what we are doing about those inaccuracies. If you looked at the data for Immigration and Customs Enforcement between 2006 and 2007, you could be led to believe that we are doing less of it. That is not correct. The difference is between 2006 and 2007, ICE, Immigrations and Customs Enforcement, trained its people on how to code properly. So what you see in 2007 is a much more accurate database than it was just the year before.

So we are identifying where we are not doing things perfectly today, and we are providing training, we are providing guidance to our workforce to ensure that we do it better in the future. I am not saying that we are perfect today. I am saying we are making significant progress and I think we are headed in the right direction.

Chairman THOMPSON. Well, if you remember, I asked whether or not you had the resources to do the job necessary. Ms. Pascrell asked whether or not you agreed with the findings of GAO. You said you did. Our effort is to, if it is a resource issue, to get you the money. But if it is a management and training issue, that is something you are going to have to do.

I just want to assure you that our concern is that too many procurements have historically gone out of the department with many things lacking. It is lack of training that caused some of it; being short-handed at the beginning of the creation of the department created it—all those things.

I would like for you to provide us with the new matrix for how you now manage the other procurement people in the other departments. You referenced a term “dual-something.”

Mr. ESSIG. Dual accountability.

Chairman THOMPSON. Yes. I am amazed at a lot of our definitions, but dual accountability will be unique for me. Some of us function based on line authority, and when you give that authority to more than one person, you really have to be clear as to lines of authority with that, otherwise there is some confusion.

Our private sector people, let me thank you very much for your addition to it. Our goal, on one hand, is to utilize the different procurement opportunities we have. We want small business, medium-size businesses to be able to compete. We want the private sector intricately involved in the department, but we want it where they understand clearly what is to be expected with that involvement. To that extent, that is where we are.

Mr. Hutton, very rarely do we get somebody from the department who agrees with the GAO findings, so we might have set a record here today.

Mr. HUTTON. Well, as GAO always does, we have great staff and I think we do good work. I think it is very positive that our findings were embraced that way.

Chairman THOMPSON. Mr. Essig, let me again say that our probing is merely to give you what we think from a tools standpoint what you need to get the job done. One of the reasons we are looking at this area and some other areas is to actually perform the oversight responsibility that as a committee we should be doing.

It is in that spirit that we will be doing hearings like this. We have done hearings on transition, hearings on resiliency and some other things within the department. So it is not singling your operation out. It is part of the oversight jurisdiction that we have.

Let me just thank all the witnesses again for your valuable testimony and your patience for this hearing. The members of the committee may have additional questions for you, and we ask you to respond expeditiously in writing to those questions.

Hearing no further business, the committee stands adjourned.

[Whereupon, at 2:01 p.m., the committee was adjourned.]

## APPENDIX

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QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR THOMAS W. ESSIG, CHIEF  
PROCUREMENT OFFICER, DEPARTMENT OF HOMELAND SECURITY

*Question 1.* The findings of the report GAO is releasing today are consistent with prior GAO and DHS Inspector General reviews, showing that many DHS performance-based acquisitions continue to lack clearly-defined requirements and measurable performance standards. What are you currently doing to address these shortcomings at a Department-wide level and at the DHS-component level?

Answer. A key factor required for successful Performance-Based Acquisitions (PBAs) is a thorough understanding of the requirement by all parties, including the program office, the procurement office, and the contractor. The term “requirement,” however, is used throughout the acquisition process and can mean different things to different people. From the perspective of the user—which includes our first responders and law enforcement personnel—the requirement is a user-defined need. From the perspective of the contracting officer and contractor, conversely, the requirement is what the contract states—no more and no less. That can be the source of problems downstream when the product or service that is delivered meets the contract’s requirement, but not the user’s. A key aspect in successful performance-based acquisitions, therefore, is the ability to translate the user need into measurable, outcome-based requirements that all parties—including the user—understand and agree to. That is not just a contracting function and consequently requires a team effort from a wide range of functional specialists. It is also a labor intensive process that must be completed prior to award of the contract.

Furthermore, PBAs are not right for every requirement. In complex service acquisitions, where user requirements may change during the course of the contract, the approach could be disadvantageous. In such a situation, the contract would “require” services that are not what the user actually needs.

While the benefits of PBA are many, the sophistication of both program, procurement and other offices involved in the process plays a key role in the ability of any agency to successfully initiate and manage a portfolio of PBAs. PBA usage requires considerable effort on the front-end of the process by a highly skilled requirements and acquisition work force. Likewise, during contract administration, PBA requires a labor-intensive effort of contractor surveillance that places further demands on the respective program management offices.

Given the nature of our mission, the organizational maturity of our relatively new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBAs in a judicious manner. Our goal is to increase both the quantity and quality of our PBAs, while continuing to meet our essential mission requirements.

In many cases, contracts were incorrectly coded as PBA in the contracts database. The Office of the Chief Procurement Officer (OCPO) is working with the components to ensure correct coding of future actions. OCPO is also currently working to strengthen acquisition and procurement Department-wide, which includes all components, by institutionalizing solid processes that will support our ability to appropriately and judiciously utilize PBA, including the following actions:

A. Strengthening the requirements and investment review processes. We are currently developing a new Department-wide requirements process and re-engineering our investment and acquisition review process;

B. Reviewing the major programs and investments to ensure that the requirements are clear, cost estimates are valid, technology risks are properly assessed, schedules are realistic, contract vehicles are proper, and the efforts are well managed. DHS is also beginning the process of conducting Investment Review Boards at the Deputy Secretary level and Program Reviews are being conducted by the Deputy Under Secretary for Management, as well as the establishment

of Acquisition Program Baselines (APBs) and authorizing execution to the APBs for all Level 1 and 2 programs;

C. Building the capability to manage complex efforts by ensuring that program offices are properly structured and staffed with the right people and skills to ensure efficient and effective program management and oversight; and to aggressively hire where we have known shortages; and

D. Examining best practice metrics in use by other departments with the intent to start implementation this year.

Further, as part of regularly conducted OCPO procurement management reviews of DHS components, PBA is addressed to ascertain whether such contracts include the fundamental PBA elements such as performance-based statements of work and corresponding outcome-based performance metrics, and to ensure that a quality assurance surveillance plan is in place and used post-award to validate contractor compliance with contract-mandated outcomes. Additionally, on a quarterly basis, component PBA data is reviewed to compare PBA goals to outcomes, and feedback capability is being added to this process this fiscal year.

*Question 2.* GAO's report states that DHS continues to lack sufficient contracting and program staff with the expertise needed to properly plan and monitor contractor execution of requirements. Can you update us on your progress in addressing acquisition workforce needs and the impediments to obtaining and retaining sufficient staff?

Answer. Obtaining qualified acquisition specialists in a timely manner continues to be a challenge. Competition for seasoned acquisition and procurement professionals is intense within the Washington, DC area in both the public and private sectors. To resolve these personnel shortages, we are intensifying our human capital planning efforts to determine what the appropriate number of acquisition and procurement professionals is and the level of requisite skills. We are currently conducting staffing studies that will help the Department better define its work force needs. We have also centralized a number of recruiting activities such as the issuance of Department-wide vacancy announcements for mid-level procurement professionals, as well as for re-employed annuitants.

This year, DHS received funding for the Acquisition Professional Career Program (APCP), a developmental program modeled after the highly successful DoD programs aiming to attract new talent to fill entry level acquisition positions and develop our future acquisition leaders. We began this program in fiscal year 2008 with a goal of 300 participants by fiscal year 2011 to fill critical acquisition positions. To support and enrich the APCP program, the component organizations will bring in re-employed annuitants. These individuals will use their knowledge and background to mentor and lead the APCP participants during their time in the program.

DHS is implementing an aggressive set of Acquisition Workforce Certification programs for Contracting and Program/Project Management. The DHS Program/Project Management Certification Program incorporates both the education, training, and experience requirements outlined in the Federal Acquisition Institute's Federal Acquisition Certification for Program/Project Management, as well as the additional requirements in the Defense Acquisition Workforce Improvement Act for Program Management. DHS is continuing to expand the identification of additional career fields such as Test and Evaluation and Cost Estimating. These efforts include establishing the education, training, and experience requirements for each field in order to ensure the DHS Acquisition Workforce is world-class.

This year, we also received funding to centralize our acquisition training program. We have adopted a three-tiered approach to acquisition training. We receive contracting certification training from the Federal Acquisition Institute, have formed a partnership with the Defense Acquisition University (DAU), and continue to purchase commercial off-the-shelf training. DHS, in partnership with DAU, is tailoring and modifying the courses used by the Department of Defense for Program Management in order to make the training relevant and applicable to DHS and its acquisition programs. DHS has already implemented and made available to the DHS acquisition work force the first of these new program management courses.

*Question 3.* DHS generally concurred with GAO's report recommendations but did not specify how it plans to address how the CPO's process and organizational changes will impact component-level management and assessment of complex acquisitions. Can you elaborate on how you plan to implement the recommendations?

Answer. The Department provides policy, oversight, and support for programs managed at the component level. Clear acquisition policies and processes are essential to achieving efficient, economic and reliable capability delivery to the Department's operational user base. Oversight must be complemented by execution support that includes mentoring by experienced acquisition professionals. Finally, there must be accountability for critical decisions and execution performance.

Acquisition is not just the award of a contract, but an entire process that begins with identifying a mission need and developing a strategy to fulfill that need through a thoughtful, balanced approach, and very importantly, effectively managing the requirement through completion of the program's lifecycle. I am among many who feel that the root cause of many of reported problems with our contracts stem from failings in the broader acquisition process, such as requirements development and definition, program management, logistics, performance standards development, quality assurance planning, and test and evaluation. Therefore, the solution to identified problems in acquisition lies in applying the necessary energy and resources, particularly to program management. We are doing that DHS.

The Department established the Acquisition Program Management Division (APMD) of the Office of the Chief Procurement Officer (OCPO) in August 2007. The Division was established to improve oversight and execution support for DHS acquisition programs. The division was established to improve oversight and execution support for DHS acquisition programs. To date, APMD has performed Quick Look assessments of 37 level 1 programs and has overseen Deep Dive reviews of the SBIInet and ASP programs. Currently, the APMD team is focused on an aggressive Investment and Acquisition process re-engineering effort to replace Management Directive 1400. APMD has restarted the Investment Review process and is establishing revised investment and acquisition decision procedures that include Acquisition Decision Memoranda. APMD is collaboratively assisting programs in strengthening their Acquisition Program Baselines. Additionally, APMD is establishing a new periodic reporting system to monitor acquisition execution at the project level.

To strengthen and support the Department's programs, OCPO is developing standards for all acquisition career fields. To date, DHS has three acquisition career fields for which DHS has certification standards (Contracting, Contracting Officer's Technical Representative, and Program Management). DHS will add certification standards for other acquisition career fields including logistics, systems engineering, cost estimating, and test and evaluation, as soon as practicable.

*Question 4.* How does DHS evaluate whether a performance-based approach should be used for a particular type of service or investment?

*Answer.* Performance-Based Acquisitions (PBAs) are not right for every requirement. In complex service acquisitions where user requirements may change during the course of the contract, the approach could be disadvantageous. In such a situation, the contract would "require" services that are not what the user actually needs.

While the benefits of PBA are many, the sophistication of program, procurement and other offices involved in the process plays a key role in the ability of any agency to successfully initiate and manage a portfolio of PBAs. PBA usage requires considerable effort on the front-end of the process by a highly skilled requirements and acquisition work force. Likewise, during contract administration, PBA requires a labor-intensive effort of contractor surveillance that places further demands on the respective program management offices.

Moving forward, it is imperative that DHS ensures that its business deals enable the Department to both accomplish our mission and provide for good stewardship of taxpayer dollars. PBAs can be an effective tool in accomplishing that; however, given the nature of our mission, the organizational maturity of our relatively new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue this contract type in a judicious manner. Our goal remains to increase both the quantity and quality of our performance-based acquisitions, in every case where their use is both practicable and appropriate, while continuing to meet our essential mission requirements.

*Question 5.* GAO's report notes that a performance-based approach requires the collective talents of several groups within an organization, including the program and contracting offices, legal, and budget. What steps has DHS taken to assist its program managers in successfully collaborating with contracting officers to fulfill their role in the PBSA process?

*Answer.* A key aspect in successful performance-based acquisitions is the ability to translate user needs into measurable, outcome-based requirements that all parties—including the user—understand and agree to. Requirements inform the acquisition process, regardless of the acquisition approach chosen. The system or service requirements for an acquisition program are flowed down from an operational need defined by a user into contractual/technical requirements which are used to procure system or service.

In any acquisition it is the government's responsibility to establish the contract requirements, whether through a statement of work, specifications, or a statement of objectives. The contractor's responsibility is to propose the method by which they will deliver the product or service sought by the government. The type of contract

used will flow from the requirement and the way it is presented to the contractor will determine the level of flexibility that the contractor has in proposing a solution.

The Department is strengthening the requirements and investment review processes by improving the Joint Requirements Council and Investment Review Board process. We are preparing to pilot a new Department-wide requirements process and we have just restarted a new investment review process. We are working on revising DHS Directive 1405 and replacing DHS Directive 1400. The current plan for replacing DHS Directive 1400 includes establishing acquisition oversight/execution policies and processes for enterprise services, as well as the other acquisition mechanisms used by DHS, and closely couples the requirements and acquisition processes. Providing clear acquisition policies and processes for enterprise services to the program management community will facilitate the collaboration required for successful performance-based acquisitions.

*Question 6.* According to GAO, DHS's CPO has several efforts underway to address oversight challenges in acquisition planning. One initiative is an acquisition oversight program. However, this acquisition oversight program does not include an evaluation of the outcomes of contracting methods such as performance-based service acquisitions. Given the hundreds of millions of dollars spent and sometimes even wasted on performance-based service acquisitions, why doesn't the Department have a structured evaluation process in place to determine the success or failures of these acquisition methods?

*Answer.* Presently, the Chief Procurement Officer's oversight program includes verifying that performance-based contracts include an adequate performance-based statement of work, including outcome-based performance metrics, a quality assurance surveillance plan, and post-award evidence of surveillance. In addition, as part of the oversight program, the Office of the Chief Procurement Officer (OCPO) plans to interview contracting officers that have used performance-based service acquisitions to obtain information on how effective they believe these acquisitions are when compared to their use of non-performance-based acquisitions. OCPO will then utilize the information obtained from these interviews to assess the success and failure of the various aspects of DHS performance-based acquisitions, considering such factors as the overall quality of our performance-based acquisitions and the availability of adequate acquisition staffing levels, both pre-award and post-award, as needed to ensure their success. When considering the future of performance-based acquisitions at DHS, given the nature of our mission, the organizational maturity of our relatively new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue this contract type in a judicious manner. Our goal remains to increase both the quantity and quality of our performance-based acquisitions in every case where their use is both practicable and appropriate, while continuing to meet our essential mission requirements.

*Question 7.* The findings of GAO's report (08-263) are consistent with prior GAO and DHS Inspector General reviews, showing that many DHS performance-based acquisitions continue to lack clearly defined requirements and measurable performance standards. What action is the Chief Procurement Officer (CPO) taking to address these shortcomings at a Department-wide level and at the DHS component level?

*Answer.* A key factor required for successful Performance-Based Acquisitions (PBAs) is a thorough understanding of the requirement by all parties, including the program office, the procurement office, and the contractor. The term "requirement," however, is used throughout the acquisition process and can mean different things to different people. From the perspective of the user—which includes our first responders and law enforcement personnel—the requirement is a user-defined need. From the perspective of the contracting officer and contractor, conversely, the requirement is what the contract states—no more and no less. That can be the source of problems downstream when the product or service that is delivered meets the contract's requirement, but not the user's. A key aspect in successful performance-based acquisitions, therefore, is the ability to translate the user need into measurable, outcome-based requirements that all parties—including the user—understand and agree to. That is not just a contracting function and consequently requires a team effort from a wide range of functional specialists. It is also a labor intensive process that must be completed prior to award of the contract.

Furthermore, PBAs are not right for every requirement. In complex service acquisitions, where user requirements may change during the course of the contract, the approach could be disadvantageous. In such a situation, the contract would "require" services that are not what the user actually needs.

While the benefits of PBA are many, the sophistication of both program, procurement and other offices involved in the process plays a key role in the ability of any agency to successfully initiate and manage a portfolio of PBAs. PBA usage requires

considerable effort on the front-end of the process by a highly skilled requirements and acquisition work force. Likewise, during contract administration, PBA requires a labor intensive effort of contractor surveillance that places further demands on the respective program management offices.

Given the nature of our mission, the organizational maturity of our relatively new Department, and the continuing staffing shortages in the full range of acquisition functions, it is essential that we pursue PBAs in a judicious manner. Our goal is to increase both the quantity and quality of our PBAs, while continuing to meet our essential mission requirements.

In many cases, contracts were incorrectly coded as PBA in the contracts database. The Office of the Chief Procurement Officer (OCPO) is working with the components to ensure correct coding of future actions. OCPO is also currently working to strengthen acquisition and procurement Department-wide, which includes all components, by institutionalizing solid processes that will support our ability to appropriately and judiciously utilize PBA, including the following actions:

A. Strengthening the requirements and investment review processes. We are currently developing a new Department-wide requirements process and re-engineering our investment and acquisition review process;

B. Reviewing the major programs and investments to ensure that the requirements are clear, cost estimates are valid, technology risks are properly assessed, schedules are realistic, contract vehicles are proper, and the efforts are well-managed. DHS is also beginning the process of conducting Investment Review Boards at the Deputy Secretary level and Program Reviews are being conducted by the Deputy Under Secretary for Management, as well as the establishment of Acquisition Program Baselines (APBs) and authorizing execution to the APB for all Level 1 and 2 programs;

C. Building the capability to manage complex efforts by ensuring that program offices are properly structured and staffed with the right people and skills to ensure efficient and effective program management and oversight; and to aggressively hire where we have known shortages; and

D. Examining best practice metrics in use by other departments with the intent to start implementation this year.

Further, as part of regularly conducted OCPO procurement management reviews of DHS components, PBA is addressed to ascertain whether such contracts include the fundamental PBA elements such as performance-based statements of work and corresponding outcome-based performance metrics, and to ensure that a quality assurance surveillance plan is in place and used post-award to validate contractor compliance with contract-mandated outcomes. Additionally, on a quarterly basis, component PBA data is reviewed to compare PBA goals to outcomes, and feedback capability is being added to this process this fiscal year.

*Question 8.* GAO's report (08-263) states that DHS continues to lack sufficient contracting and program staff with the expertise needed to properly plan and monitor contractor execution of requirements. Please provide an update us on your progress in addressing acquisition workforce needs and the impediments to obtaining and retaining sufficient staff.

Answer. Response was not received at the time of publication.

*Question 9.* DHS generally concurred with the recommendations in GAO-08-263 but did not specify how it plans to address how the CPO's process and organizational changes will impact component-level management and assessment of complex acquisitions. Please elaborate on how you plan to implement the recommendations.

Answer. Response was not received at the time of publication.

*Question 10.* How does DHS evaluate whether a performance-based approach should be used for a particular type of service or investment?

Answer. Response was not received at the time of publication.

*Question 11.* GAO-08-263 states that a performance-based approach requires the collective talents of several groups within an organization, including the program, contracting, legal, and budget offices. What steps has DHS taken to assist its program managers in successfully collaborating with contracting officers to fulfill their role in the PBSA process?

Answer. A key aspect in successful performance-based acquisitions is the ability to translate user needs into measurable, outcome-based requirements that all parties—including the user—understand and agree to. Requirements inform the acquisition process, regardless of the acquisition approach chosen. The system or service requirements for an acquisition program are flowed down from an operational need defined by a user into contractual/technical requirements which are used to procure system or service.

In any acquisition, it is the government's responsibility to establish the contract requirements, whether through a statement of work, specifications, or a statement

of objectives. The contractor's responsibility is to propose the method by which they will deliver the product or service sought by the government. The type of contract used will flow from the requirement, and the way it is presented to the contractor will determine the level of flexibility that the contractor has in proposing a solution.

The Department is strengthening the requirements and investment review processes by improving the Joint Requirements Council and Investment Review Board process. We are preparing to pilot a new Department-wide requirements process and we have just restarted a new investment review process. We are working on revising DHS Directive 1405 and replacing DHS Directive 1400. The current plan for replacing DHS Directive 1400 includes establishing acquisition oversight/execution policies and processes for enterprise services as well as the other acquisition mechanisms used by DHS and closely couples the requirements and acquisition processes. Providing clear acquisition policies and processes for enterprise services to the program management community will facilitate the collaboration required for successful performance-based acquisitions.

*Question 12.* Does DHS have a transition plan for how to successfully continue its on-going initiatives to improve acquisition workforce and oversight of complex investments when a new administration is in place?

*Answer.* We are undertaking a multi-pronged approach to our transition planning to ensure operational continuity of homeland security responsibilities during the Presidential Administration transition. Part of this approach includes continued focus on our on-going initiatives of improving the acquisition work force and oversight of complex investments. The Department has in place an experienced and capable team of senior-level acquisition officers to lead the acquisition work force improvement effort through the transition and well into the future. While the Under Secretary for Management, who also serves as the Chief Acquisition Officer for DHS, is a Senate-confirmed Presidential appointee, he is legally authorized to stay in his position through the transition until the incoming Under Secretary for Management is confirmed. In addition, the Under Secretary for Management is supported in his acquisition role by the Deputy Under Secretary for Management, Chief Procurement Officer, and Deputy Chief Procurement Officer, all of which are career positions and all of which are currently filled by individuals who have been integrally involved in the DHS acquisition work force development process. The continuing efforts mentioned below are a key element of the Management Directorate's future goals and will be included in the Transition Briefing Book for the new administration's incoming Secretary for Homeland Security.

To address our acquisition personnel shortages and improve our acquisition work force, we have been intensifying our human capital planning efforts to minimize skill and competency gaps as well as minimize our critical vacancies and reliance on contractors. For example, in response to the Office of Management and Budget 1102 Contracting Workforce Competency Gap Survey, we developed a training plan that spans the next 3 years, well through the 2009 transition. This training plan targets the contracting functional area within the DHS acquisition work force, but it will also benefit other acquisition career fields including program management and Contracting Officer's Technical Representatives. We are also currently conducting staffing studies to better define our acquisition work force needs. Currently, our work force includes program managers and contract specialists. As part of our human capital planning efforts, we will be identifying other required acquisition career fields such as test and evaluation, systems engineering, logistics, and cost estimating. We are aggressively working to ensure that each acquisition position, upon definition, is encumbered by an acquisition professional trained and certified at the appropriate level. To this end, we are continuously reviewing and updating our Acquisition Training Program, the underpinning of a good certification program. We are utilizing the Defense Acquisition Workforce Improvement Act framework to develop DHS certification standards. We have also centralized a number of recruiting activities including issuing Department-wide vacancy announcements. Our centralized recruitment efforts to date have focused primarily on contracting professionals. Expansion to other acquisition career fields will occur as each series is defined and Department-wide needs are identified. This initiative supplements our components' on-going recruitment efforts with a goal of recruiting the best candidates available.

Our most substantial recruitment activity began in 2005 with the establishment of a DHS Acquisition Fellows Program. The goal of the Fellows Program was to attract new talent at the entry level into our acquisition positions, and retain and train them through a professional career development program. The Office of Procurement Operations (OPO) and the Transportation Security Administration (TSA) participated in this program and this June, a diverse class of 13 Fellows from TSA and seven Fellows from OPO will be graduating.



Building on the success of the Acquisition Fellows Program, we expanded it into the Acquisition Professional Career Program and modeled it to further resemble the highly successful Department of Defense program. This year, we plan to expand the program to support 33 additional intern positions. In fiscal year 2009 we are planning for a total of 100 intern positions to be funded. Our inaugural Acquisition Professional Career Program class began in January 2008 and a second class begins in June 2008. Our goal is to grow this program to 300 positions by fiscal year 2011 in order to fill critical acquisition positions.

For the past 2 years, we have made considerable efforts to ensure our major programs are properly structured and resourced to be successful. Our goal is to make certain the programs we are implementing are on track for the next administration. In August 2007, we formalized our oversight efforts and support for acquisition programs by establishing the Acquisition Program Management Division (APMD) within the Office of the Chief Procurement Officer. To date, APMD has performed Quick Look assessments of 37 Level 1 programs and has overseen Deep Dive reviews of the SBInet and ASP programs. APMD has provided advice and guidance to a number of programs, particularly in the area of cost-benefit analysis. We are ensuring that the requirements are clear, cost estimates are valid, technology risks are properly assessed, schedules are realistic, contract vehicles are proper, and the efforts are well-managed.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR JOHN HUTTON, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

*Question 1.* DHS generally concurred with GAO's recommendations, and provided information on the CPO's initiatives to strengthen the department's acquisition and procurement. What are your views on the CPO's initiatives, and what more needs to be done to address GAO's recommendations?

Answer. Improving acquisition management has been an ongoing challenge since DHS was established and requires the Department's sustained management attention. DHS generally concurred with our recommendations that it: (1) routinely assess requirements for major, complex investments to ensure they are well-defined, and develop consistently measurable standards linked to those requirements; and, (2) systematically evaluate the outcomes of major investments and relevant contracting methods. DHS responded to these recommendations by noting that the Chief Procurement Officer (CPO) is revising the investment review process; reviewing major programs and investments; and is building the capability to manage complex efforts by ensuring program offices are properly structured and staffed with the right people and skills. However, the Department's response did not address how these initiatives will impact component-level management and improve the assessment of complex acquisitions to improve outcomes.

With regard to GAO's third recommendation, that DHS continuously improve the quality of the Federal Procurement Data System—Next Generation (FPDS-NG) data to facilitate the ability to accurately identify and assess the use and outcomes of various contracting methods, DHS stated that the CPO validates the accuracy of the FPDS-NG data that is part of the CPO's oversight review sample. This includes an evaluation of whether the contracts have been properly coded as performance-based. DHS also added that the CPO is an active member of the Office of Federal Procurement Policy (OFPP) group working to improve FPDS-NG data and is reaching out to DHS components to improve data collection. However, while these CPO initiatives may be steps in the right direction, DHS's response did not present the results of the oversight reviews, or state how these coordination efforts address the causes of the miscoding of contracts or how they will improve the quality of FPDS-NG data in the future.

*Question 2.* Your report notes the fact that DHS is likely farther away from meeting the targets for numbers of eligible acquisitions using a performance-based approach. Do you think the emphasis on performance targets is achieving the intended outcomes, or should the focus shift from targets to performance on individual acquisitions?

Answer. DHS is likely farther away than previously reported from meeting the governmentwide performance-based targets for eligible service obligations established by the Office of Management and Budget (OMB). GAO's analysis of DHS reported data on contracts coded as performance-based indicated that FPDS-NG data were not reliable for reporting on the performance target. This analysis is consistent with the Acquisition Advisory Panel's report which noted that 42 percent of the performance-based contracts it reviewed at 10 Federal agencies had been incorrectly coded. Consistent with Federal procurement policy, DHS has emphasized a performance-based approach to improve service acquisition outcomes. We noted in our re-

port, however, that in keeping with our prior findings, DHS's designation of a service acquisition as performance-based is not as relevant as the underlying contract conditions. Beyond focusing on performance targets for numbers of service acquisitions, sound acquisition practices, such as clearly defining requirements; establishing complementary measurable performance standards; and planning and conducting surveillance in order to take corrective actions are all hallmarks of successful service acquisitions. Continued emphasis on these areas is required to prevent less than expected acquisition outcomes.

*Question 3.* Your report notes issues with procurement staffing at the Department. Can you explain how these staffing issues affect the Department's ability to manage and oversee complex contracts?

Answer. Insufficient work force has presented challenges for DHS in implementing its service acquisitions, including those that use a performance-based approach. DHS continues to lack contracting and program staff with the expertise needed to adequately plan or monitor contractor execution of requirements. In addition, some component acquisition representatives indicated a lack of collaboration between the program and contracting offices. Prior GAO work has highlighted the importance of having the right people with the right skills to achieve successful acquisition outcomes. However, DHS has not fully defined the types of positions or numbers of staff for each position in its acquisition work force. CPO representatives have identified staff shortages as one of the primary obstacles to successful acquisitions. Specifically, insufficient contracting and program office staff was a challenge for two of the investments we reviewed—CBP's SBInet and ACE programs. In these two cases, contracts were not on schedule or contractor performance was otherwise less than expected. The need for improved collaboration among acquisition work force is also a recurrent theme in our work on acquisition management. Senior acquisition staff at TSA and CBP indicated that collaboration between contracting and program offices in general has been a challenge. GAO has ongoing work at DHS on the acquisition work force for this committee, and we plan to report on these initiatives in the final product for that engagement.

*Question 4.* Your report identifies 138 contracts that may have been miscoded as performance-based contracts. Can you discuss this misidentification problem? Specifically, what does the Department need to do to assure that contracts are appropriately identified?

Answer. Inaccurate Federal procurement data is a long-standing governmentwide concern. Our prior work and the work of the General Services Administration's Inspector General have noted issues with the accuracy and completeness of FPDS and FPDS-NG data. In 2007, the Acquisition Advisory Panel reported from its review at 10 Federal agencies that 42 percent of the performance-based contracts it reviewed had been incorrectly coded. Of 138 contracts at the Coast Guard, CBP, ICE, and TSA coded in FPDS-NG as performance-based, DHS contracting representatives confirmed that only 42, about 30 percent, contained all of the required performance-based elements—a performance work statement, measurable performance standards, and a method of assessing contractor performance against performance standards. About 18 percent had some, but not all, of the required performance-based acquisition elements, and about 51 percent—totaling about \$347.3 million—had none of the required elements. Our report noted that, according to DHS contracting representatives, contracts were miscoded as performance-based for the following reasons: (1) contracting staff may have coded contracts as performance-based without the presence of the required elements; (2) contracting staff may not have followed data validation procedures; and (3) technical knowledge of FPDS-NG. Accurate FPDS-NG data could facilitate the CPO's departmentwide oversight of acquisitions, including an evaluation of the outcomes of the performance-based acquisition method. To improve data reliability, we recommended that the department continuously improve data quality to facilitate the ability to accurately identify and assess the use and outcomes of various contracting methods.

*Question 5.* Can you explain how properly managed performance-based contracts shift the risk away from the government and onto the private sector?

Answer. A performance-based approach includes: a performance work statement that describes outcome-oriented requirements in terms of results rather than the methods of performing the work; measurable performance standards describing how to measure contractor performance in terms of quality, timeliness, and quantity; and the method of assessing contractor performance against performance standards, commonly accomplished through the use of a quality assurance surveillance plan. These characteristics, if properly implemented, can help ensure that services meet cost, schedule and performance requirements, thereby reducing risk to the government and improving service acquisition outcomes. To further minimize the government's risk, Federal procurement law establishes a preference for using firm fixed-

price contracts or task orders—where a specific price is paid regardless of a contractor’s incurred costs—when using a performance-based approach. A performance-based approach also calls for greater collaboration among procurement and program representatives throughout the contract period. Including stakeholders with varied knowledge and skills at the earliest point possible enables acquisition teams to determine that all aspects of the acquisition are necessary, executable, and tailored to the transaction’s risk level. While these attributes have been accepted as sound management practices, prior GAO work has found that performance-based acquisitions must be appropriately planned and structured to minimize the risk of the government receiving services that are over cost estimates, delivered late, and of unacceptable quality.

*Question 6.* Can you explain how the Office of Management and Budget’s mandate regarding performance-based awards may affect an agency’s actions?

Answer. Since fiscal year 2002, the Office of Management and Budget (OMB) has established governmentwide performance targets to encourage agencies to apply a performance-based approach to service acquisitions. In 2007, the congressionally mandated Acquisition Advisory Panel reported on the implementation of a performance-based approach and recommended that OMB adjust the governmentwide target to reflect individual agency assessments and plans. Subsequently, in May 2007, OMB issued a memo allowing agencies to establish their own targets and report on them in management plans. OMB has also stressed the importance of submitting timely and accurate procurement data to FPDS–NG. However, because a large proportion of contracts are miscoded in the Federal Procurement Data System (FPDS–NG) as performance-based, targets set based on these data may be overestimated. Additionally, performance targets may create an incentive to code contracts as performance-based although they do not have the three required elements intended to foster good contract outcomes: a performance work statement, measurable performance standards; and quality assurance surveillance. While performance targets can provide focus to obtain desired goals, emphasis on sound acquisition practices to achieve desired outcomes should be agencies’ primary focus.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR ANNE F. REED, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ACQUISITION SOLUTIONS

*Question 1.* The Federal procurement work force is undergoing massive change. There is a concern that much of the Federal work force is nearing retirement. The Federal Acquisition Institute found that 60 percent of DHS procurement personnel will be eligible for retirement by 2015. Can you discuss how the changing nature of the Federal procurement work force will impact Federal acquisition practices and policies?

Answer. In the past decade, Federal agencies have increasingly relied on contracting to achieve their missions. That reliance and legislative reforms have moved the definition of acquisition “success” far beyond mere process-oriented compliance to accountability for delivering program outcomes. Federal acquisition is in the midst of a full-scale transformation from a tactical focus on meeting individual program requirements at a transactional level to a mission critical strategic function that optimally addresses mission needs at the enterprise level in partnership with other agencies, contractors and other stakeholders.

Acquisition reforms in the last 15 years have emphasized results-driven approaches that can accelerate and improve acquisition dramatically, but do not necessarily make the acquisition process “easier” or simpler. Statutory, regulatory, and management mandates still require Federal agencies to execute well-conceived, thoroughly documented acquisitions that maximize competition while taking advantage of marketplace diversity to leverage the strengths of firms of all sizes across the entire socioeconomic spectrum. Agencies still must maintain strong internal controls to safeguard the fiduciary integrity of appropriated funds as money well-spent to deliver on their missions. Moreover, the current environment demands business acumen and sophisticated reasoning in addition to compliance with rules and detailed procedures.

Ironically, as the number, complexity, and dollar value of transactions steadily increased in the last decade, the Federal Government consistently under-invested in recruiting, hiring, and training the acquisition work force. The longstanding investment constraints have left DHS and the rest of the government with too few contracting and program management professionals to accomplish a mission that continues to grow exponentially in scope and complexity.

While recent hiring has brought an influx of talented, but inexperienced newcomers to Federal service at the entry level, the virtual hiring freeze also has resulted in a Federal acquisition work force disproportionately concentrated at senior

levels with very thin ranks of mid-level professionals and managers. Retirements in the next 5 years will exacerbate staffing challenges as the government does not have sufficient mid-level professionals to move up and replace the retirees. Moreover, in the interest of retention, some of the “mid-levels” have moved into senior level positions (i.e., SES, GS-14 and GS-15) much earlier with less experience and expertise than in the past—struggling in some cases to keep up with the demands of their positions much less mentoring and developing newcomers.

The work force deficit creates challenges in dimensions other than mere numbers. Transforming Federal acquisition demands critical competencies not prevalent in the current work force; many of whom started and progressed through their careers when contracting focused on compliance and process far more than performance and outcomes. To meet the demands of the dynamic Federal environment today and in the future, Federal acquisition professionals must think strategically and reconcile competing interests to deliver business acumen and innovation with an in-depth understanding of the programs they support, the markets in which they operate, and the contractors with whom their agency must partner to accomplish the mission. Understaffed, overworked, and lacking training, the current Federal work force has neither the time nor the “know-how” to transform Federal acquisition—much less to mentor a new generation of professionals to function as the strategic business advisors needed to deliver innovative, outcome-oriented acquisition approaches.

The characteristics of the new generation of recruits, members of the “millennial” or “Gen Y” cohort, differ greatly from the generation that precedes them in ways that signal that the manner in which the government conducts acquisition may change in the future. According to a Spring 2008 article in *The Public Manager*, “The Future Workforce: Here They Come,” by William Broddie, Jeanne Contardo, and Robert Childs, this new generation of workers and future policymakers are characterized as “. . . unconstrained by time, space, and organizational boundaries and will leverage innovative technologies to communicate and interact effectively, collaborating with colleagues around the world and with new partners through virtual networks to achieve individual and organizational goals.” While the cohort of American workers in their 50’s held an average of 10.5 jobs during the prime of their careers, we can expect the 21st century workers to hold as many as 20 or 30 jobs during their careers. *Ibid.* We are already experiencing the increased mobility of Federal workers resulting not only from the characteristics of the new generation but also induced by the shift from the static Civil Service Retirement System to the portable Federal Employees Retirement System. This mobility contributes to the severe shortage of government acquisition professionals as Federal employees move more easily to the private sector.

#### IMPACT

These work force characteristics will have an impact on Federal policies and practices most likely in the following ways:

- *Hiring Flexibility and Funding:* Federal agencies need increased funding, additional billets and expedited hiring authorities to fill big gaps in acquisition work force competencies and capacities to meet the demands of continued heavy reliance on contracting for the foreseeable future.
- *Competency Development and Enhancement:* Developing needed competencies for the acquisition community on an accelerated track will require significant increases in funding for training, internships and other innovative career development programs.
- *Civil Service Rules Review:* Agencies need changes to the Federal civil service rules that make it much easier to hire. Further, rather than basing grade mostly on the number of Federal employees reporting to the manager, the rules should shift to account for the demands of managing in a multi-sector work force environment that contemplates accomplishing government missions with a mix of Federal, contractor, non-profit, State and local employees.
- *Personal Services Contracts Clarification:* As recommended by the Acquisition Advisory Panel, the rules regarding personal services contracting require re-examination and clarification. Currently, some agencies have authority to issue personal services contracts; others do not. Even within some agencies, certain components have the authority and others do not. Policy makers should consider that personal services (which some argue really are not “personal” services, but necessary staff augmentation), are a critical resource for many agencies’ operations. The need for these services is brought on, at least in part, by current personnel rules that make Federal hiring a cumbersome, time-consuming process.

- *Human Capital Planning*: Federal human capital planning policy also must account for staffing, operating and planning succession in a multi-sector work force, holistically and realistically addressing resource needs for contract support, volunteer staff, intergovernmental exchanges and Federal annuitant as well as full-time Federal civil service staff. Staffing plans for major acquisition need to provide for a multi-disciplinary mix of skills and experience, continuity and succession planning.
- *Knowledge Capture, Transfer and Use*: The increased mobility and attrition within the Federal acquisition work force puts a premium on the adoption of effective processes for capture, transfer and reuse knowledge. The Federal acquisition community is an experienced-based profession in which the skills and insight necessary for success are learned primarily through hands-on effort and through mentoring. As all ranks and levels of the work force move because of promotion, transfer and retirement, there is a critical need to flatten the learning curve associated with the loss of knowledge and experience that those who remain or replacements need to fulfill agency missions. New employees must have a means to quickly learn the current policies and most effective practices. Practitioners must capture their experience and learnings in consistent and disciplined ways that others in the organization can share. Developers of policies and procedures need to access and leverage the knowledge of expert practitioners to improve the practice of acquisition and enhance the abilities of those in the profession.
- *Chief Acquisition Officers Role*: Appoint full-time Chief Acquisition Officers with broad understanding and competence in the field of Federal acquisition and emphasize their responsibility to rebuild the acquisition work force and the policy infrastructure needed to guide them.
- *Balanced, Outcome-Focused Oversight*: Executive and congressional oversight functions must support, encourage and facilitate the transformation of acquisition from a transaction-based, process-oriented administrative function to a performance-based, outcome-oriented mission critical function that it has and must become. Balance the number of overseers in proportion to the number of workers to do the job, and consider the impact of multiple, overlapping, or duplicative reviews by various oversight organizations on the ability of agencies to get the job done. Indeed, policy that promotes insight into operations will prove far more effective in promoting a focus on getting positive outcomes and overcoming barriers to achieving them than will countless after the fact oversight investigations.

The collective impact of the deficits and changing demographics of the current acquisition work force demands policy support from Congress and the Executive branch to the replenish acquisition work force and recapitalize the infrastructure that supports it, with an eye toward the characteristics of the next generation—a generation that values focus on mission, collaboration, mobility, and innovation.

*Question 2.* Many experts have said that performance-based contracts require adequate market research before the solicitation is issued. Can you explain the importance of market research and the nexus between market research and the determination of the contract requirements?

Answer. Federal procurement statutes (see, 41 U.S.C. 253a(a)(1), 41 U.S.C. 264b, and 10 U.S.C. 2377) and regulations (FAR 10.001) have long required agencies to conduct market research prior to defining requirements for an acquisition. The requirement for market research primarily focuses on ensuring that agencies have an understanding of the context and possibilities in crafting the optimal approach to acquisition as well as to identify the characteristics of an ideal solution—not to define requirements or identify solutions for the government to specify for delivery. Ideally, market research takes place before the agency has translated an identified need into specific requirements for an acquisition. Because these inquiries precede articulation of specific requirements, candid and in-depth discussions can take place with industry experts without concerns about release of “procurement sensitive” information.

Market research typically falls into two types. The first type focuses on general ongoing research to keep up with trends, developments and competitive dynamics in the market place. This research may take the form of attending trade shows and/or conferences, reviewing trade journals, surveying websites, participating in association functions and other activities to identify new capabilities, technologies and providers. The second type of research relates to specific acquisition and typically involves a “deeper dive” into benchmarking successful executions and identifying critical success factors to understand the range of possibilities to meet an identified need. These efforts build on the general research with “one-on-one” discussions with solutions providers and similarly situated organizations which confront the same

challenges. It also includes more formal processes such as requests for information, pre-solicitation notices and conferences, pre-proposal conferences and site visits.

Market research enables the agency to understand the capabilities and capacity of the marketplace to deliver solutions. It offers an opportunity to meet with the experts in crafting and implementing solutions to acquisition planning challenges like those facing the agency. Market research sessions will include discussions with similarly situated organizations to gain insight on how others have dealt with the same challenges in other contexts. This analytical effort focuses on determining how a particular market segment actually conducts business and identifying leading practices before the government formulates acquisition strategies. Market research therefore not only helps identify leading providers, but also provides invaluable insights on what has worked well and how to avoid others' mistakes. These sessions also provide a chance to collect information from similarly situated organizations and solutions providers on metrics, measurement practices and incentive structures used to deliver successful outcomes.

What should the government do with the information gained? Analyze the results of all the meetings; identify "lessons learned," trends, and promising metrics and incentive approaches; and prepare a market research report that captures the knowledge and learnings developed in the sessions. To ensure integrity in the acquisition process and promote candor in response to future market research inquiries, agencies must respect the proprietary rights of participants, label all documents containing "confidential business information" and limit their distribution.

The market research report then provides information in identifying the optimal acquisition strategy and defining specific requirements for articulation in a statement of objectives, a performance work statement or a statement of work that will form the basis of a solicitation.

We offer a couple examples to illustrate how market research provides critical knowledge for shaping sound acquisition strategies and defining requirements with clarity that directly link to achieving strategic agency objectives.

In one case an agency began market research with a very small solution set for addressing information technology infrastructure and services needs. The approach was altogether too typical: Take the last RFP, update it, and buy basically the same thing again. This approach would have resulted in the agency expressing its need in terms of the state of the marketplace that had existed in the original competition many years previously. The agency would have issued a "facilities management" work specification instead of using an approach more typical of the marketplace today: true outsourcing in a managed services environment with performance-based partnering. After conducting meaningful market research, the range of possible approaches and solutions increased dramatically, and the agency adopted an approach that involved the IT solutions provider capitalizing the infrastructure and assuming responsibility for keeping technology current, appropriately scaled with features, functionality and necessary services tailored for the users in the operational context of the agency's law enforcement mission.

In another case, market research led to radical change in the whole approach to the acquisition—from an IT system support services contract to a performance-based, loan-servicing contract. The agency ended up reaching out to a completely different segment of the marketplace to address its needs with a completely different approach to performance and contract pricing.

The agency was trying to develop incentive provisions to reduce defaults and improve performance of its loan portfolio. Under the IT systems support model with a pricing arrangement based on the activities performed, the agency actually paid the contractor more for non-performing loans because poorly performing loans require so many more actions (letters, etc.) During market research, the agency learned that standard practice in the loan-servicing industry is to structure agreements so that contractors only get paid if the loans remain performing. The standard commercial practice represented a marked contrast from the activity-based pricing with the incumbent contractor which provided no incentive to achieve the agency's intended outcome—minimized loan defaults. The agency learned that commercial loan-servicing outfits have a powerful contractual incentive to do what it takes to keep the loans performing. The agency adopted the commercial loan-servicing model to establish a win-win arrangement that aligned the contract with the agency efforts to keep loans performing and minimize defaults.

*Question 3.* The culture of the procurement work force may involve viewing the award as a final step in the process. However, in performance-based contracts, the award is an intermediate step. What are your thoughts on how to change this culture?

Answer. Regardless of whether an acquisition employs performance-based approaches or not, contract award is just an intermediate step. Indeed, while a signifi-

cant milestone, contract award represents only the end of the beginning of the acquisition life cycle. The product of the acquisition process is an outcome, not a contract. The contract simply documents the parties' agreement to work together to achieve that outcome. Execution of the contract delivers the outcome. However, fostering a life cycle view of the acquisition process within the procurement work force will require a significant shift in mindset that will not happen spontaneously or overnight. This cultural transformation will require committed leadership, clarity in direction, consistency in application and continual reinforcement in messaging and managing to get procurement professionals to internalize the change and adopt an outcome-orientation in practice.

"An organization's culture encompasses the values and behaviors that characterize its work environment, and in particular, how people work with each other, how they are held accountable, how they are rewarded, as well as how communication flows through the organization." Jeffrey A. Schmidt, ed., *Making Mergers Work: The Strategic Importance of People* (Alexandria, Va.: Towers, Perrin, Foster and Crosby/Society for Human Resource Management, 2002), as reported by GAO in GAO-03-669. Changing culture to alter behavior must address both the work environment and the people. No amount of communication or training will change the preoccupation on contract formation and award unless the environment that fosters that mindset changes to promote a more outcome-focused perspective. Processes, policies and incentive structures also must align to promote changes in norm, mores and values of procurement professionals within the work environment. Agencies must take deliberate, consistent actions to emphasize the importance of post-award performance in delivering superior acquisition outcomes.

First, the transition from a performance-based contract award to performance-based management requires special care. Otherwise, there is a tendency to slip back into specifications-based behaviors that can be highly detrimental to ensuring continued focus on delivering performance results in partnership. Preparation for performance-based project management (PBPM) should begin well in advance of contract award to ensure a smooth transition from award to successful implementation. Indeed, from the early stages in acquisition planning, the agency should consider post-award execution in forming the acquisition team, formulating acquisition strategy and defining requirements.

Second, the agency must make sure that the acquisition team has enough people and resources to manage execution of the contract to deliver program results. For several years now, the acquisition work force has operated under overwhelming pressures—for both contracting officials and program/project managers. The growth of the procurement budget and complexity of contracts have added exponentially to the workload relative to the size and skills of the acquisition work force. Most acquisition professionals simply don't have time to do anything other than move on to the next contract award. Agencies need to devote more people and resources to avoid or minimize the suboptimal operating practices and approaches that the crushing workload compels.

Third, acquisitions should be undertaken by a multi-disciplinary team working together from identification of the need to award through performance and delivery. Continuity on the team promotes focus on delivering the ultimate outcomes rather than work simply focused on achieving intermediate milestones along the way. That team should include members from the program, contracting and user/beneficiary communities working in an integrated manner with regular input from legal, finance and oversight functions as well as key stakeholder groups. The team should begin to shape the acquisition with the end in mind from the outset. That means they need to envision what success will look like and establish critical performance measures and metrics that will signal progress toward that goal.

Fourth, the acquisition team should train together with a curriculum that focuses on delivering more than just compliance-based "check the box" training. They should be steeped in performance-based management practices through a curriculum that builds organizational capacity and aligns teams to succeed with PBA. The role of the government manager shifts from checking compliance with contract terms to ensuring that contractor performance actually delivers the desired outcome for the agency and the public. Agency leadership should reinforce those lessons with support and encouragement for the team to use what they have learned. Too often, Federal employees have taken PBA courses only to return to an environment that insists on adherence to conventional compliance-based contracting and thwarts the efforts to put newfound PBA lessons into practice. This may happen either because their management doesn't truly support PBA or because other team members were not trained with them and are not operating from the same PBA principles.

Fifth, at least some of the same team members ideally should remain on the effort through the entire life cycle from award through performance. The long duration of

most major acquisition efforts and the increasing mobility of the Federal acquisition work force make staff turnover inevitable. To counter or mitigate negative impacts of that turnover, agencies will benefit from combining an aggressive approach to retaining key talent with active succession planning and effective programs to capture, transfer and use program knowledge.

In short, changing acquisition work force culture to recognize the importance of managing contracts for success after award starts with leaders who communicate, inspire, and motivate people to rally around performance-based acquisition management as an organizational goal. That leadership also must extend to allocating staff, resources and management attention to delivering successful acquisition outcomes in partnership with contractors. Achieving that partnership requires attracting, rewarding and retaining teams that can and will be held accountable for executing contracts for superior results.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR ALAN CHVOTKIN, EXECUTIVE VICE PRESIDENT AND COUNSEL, PROFESSIONAL SERVICES COUNCIL

*Question 1.* The Federal procurement world is undergoing massive change. There is a concern that much of the Federal work force is nearing retirement. The Federal Acquisition Institute found that 60 percent of DHS procurement personnel will be eligible for retirement by 2015. Can you discuss how the changing nature of the Federal procurement work force will impact Federal acquisition practices and policies?

*Answer.* The Department of Homeland Security spent more than \$15 billion in fiscal year 2006 on the purchase of goods and services, with a major portion of that spent on the purchase of services. There is a critical need for the Department of Homeland Security to have a well-trained and well-compensated Federal acquisition work force in sufficient numbers to meet the department's need for contracting officers, technical officials, contract administration and appropriate oversight. A first step for determining the right numbers and skills is to understand what resources exist in the department today and this was initiated through the voluntary skills assessment of the contracting work force undertaken by the civilian agencies. The second step is for the department to determine where it needs to be in the next 5 to 10 years; a key to answering the question of "where are we going" is the department's strategic planning process and the linkage to the strategic human capital plan for the department—and that human capital plan must include a specific focus on the acquisition work force. Finally, if the department knows where its work force is today and where its work will likely be performed in the next decade, the department can put an action plan in place to bridge those known pillars.

In addition, while simultaneously assessing the qualifications and capabilities of the current work force, the department should be assessing the tools that are available to meet those substantive requirements. One of those tools to fulfill the department's mission requirements is the acquisition system. The Federal acquisition system generally, and the department's acquisition policies and procedures, must be evaluated to ensure that they support the mission goals of the department. For example, if the department anticipates that in the next decade it will spend a greater share of its procurement dollars on the purchase of services, the department must ensure that it has the internal and external procurement procedures and the work force skills to be able to procure services in addition to commodities.

Finally, the Federal Government generally, and the department specifically, must reverse the current hiring trends and become an employer of choice for the next generation of workers. It is not enough to swap employees from one department or agency to another without taking aggressive steps to fill the retirement gaps. Some short-term steps the Professional Services Council supports include permitting retiring employees with critical skills to be temporarily reemployed and creating a contingency contracting corps that permits agencies to call upon the existing work force with critical skills to be temporarily redeployed to meet emergency agency needs—such as to respond to a natural disaster. Some mid-range steps the Professional Services Council supports include expanding student loan forgiveness programs for those who commit to a minimum period of Federal service in critical skills shortage areas and providing alternative pay and performance systems for critical skills. Some long-term steps the Professional Services Council supports include providing robust internship and mentoring programs for younger workers, rotational assignments for the work force to expand opportunities, and accelerating the access to training and leadership opportunities.

Oversight is an appropriate and essential element of the acquisition system; the organizations that provide independent reviews and advice to the contracting officer



would also benefit from rotational assignments “in the trenches” and they should be required to take the same training as the acquisition work force.

Finally, Congress has a critical role to play. It should fully fund the salaries and expenses for the acquisition work force identified in that strategic human capital plan; it should also carefully assess whether mistakes that are made are the result of individual actions or systemic issues. Congress should also proceed cautiously before imposing additional process requirements or restricting the department’s ability to assess and deploy the most effective acquisition approaches to meet their defined needs.

*Question 2.* Many experts have said that performance-based contracts require adequate market research before the solicitation is issued. Can you explain the importance of market research and the nexus between market research and the determination of contract requirements?

Answer. Market research is an essential element of every Federal agency acquisition—and one of the reasons why it is discussed in Part 7 of the Federal Acquisition Regulation (FAR) as part of the acquisition planning phase before the FAR discusses using any of the techniques to conduct the specific acquisition. In the context of performance-based contracting, the first characteristic of a successful performance-based acquisition is having a clear statement of objectives or performance work statement (depending on which is used) since it becomes the key document for setting the agency’s needs. At this phase, market research can provide significant assistance to the agency in identifying examples of clear requirement statements and where there have been successful prior awards for the same or similar requirements.

The second characteristic is having measurable performance standards (i.e. in terms of quality, timeliness, quantity, etc.). The standards must be measurable and structured to permit a fair and accurate assessment of the contractor’s performance. These measures must also be directly tied to the outcomes to be achieved, should be limited in number and scope, and must take into account the cost to the government and the contractor of developing and reporting on any specific measure. Again, market research is an excellent planning tool to help the agency identify appropriate performance measures that are specifically targeted at the performance work statement; the research may also identify favorable and unfavorable lessons learned from metrics used on prior performance-based acquisitions.

The third characteristic is the method of assessing contractor performance against the performance standards. The most common method for assessing contractor performance is the requirement for the government to have a quality assurance surveillance plan (QASP). The government may either prepare the QASP or require the contractor to submit a proposed plan for the government’s use with its proposal. In the preparation of the acquisition strategy, market research can assist the agency in identifying appropriate measures of “quality assurance” and of contractor performance. Even if the government’s solicitation asks offerors to submit a proposed QASP, market research conducted by the agency in advance of the release of the solicitation will provide the agency with valuable information to assess the scope, depth and reasonableness of the offerors’ proposed plans.

*Question 3.* The culture of the procurement work force may involve viewing the award as the final step in the process. However, in performance-based contracts, the award is an intermediate step. What are your thoughts on how to change this culture?

Answer. There is a clear line of demarcation between the steps leading to contract award and the steps relating to contract administration. Often, these responsibilities are split between different elements of the Federal work force. While in itself this demarcation is not a “culture” issue, greater attention is often placed on the award phase of a contract rather than on the administration phase. The three key elements required to change the culture are strong leadership, full involvement by all stakeholders and continuous learning.

As to leadership around performance-based contracting, it is a “different” kind of procurement that starts with the agency defining its requirements and permitting the competing offerors to propose their specific solutions and approaches to execution. This type of contract puts a premium on the requirements identification phase and the leadership of the entire organization must be involved in and support the use of this alternative acquisition method. As I noted in my written statement, it is not just a contracting exercise.

The second element is the full involvement of all stakeholders in the organization throughout the design and implementation of the performance-based action; the agency’s senior leaders, the end-users, program management and even the oversight community must be involved in the formulation of the statement of objectives or performance work statement and the decision to use the performance-based ap-

proach. Again, it is not just a contracting exercise. When there is full involvement of all of the key stakeholders in these crucial, up-front decisions, there is an organizational investment in its contents and its success—and there is greater likelihood that the procurement will be successful.

Finally, there must be continuous learning about the status of the procurement and the tools and techniques available to measure success. Without this activity, stakeholders aren't kept informed of market research findings, lessons learned from prior contracts, or new techniques for achieving the agency's mission needs. Merely repeating past actions does not ensure future success.

